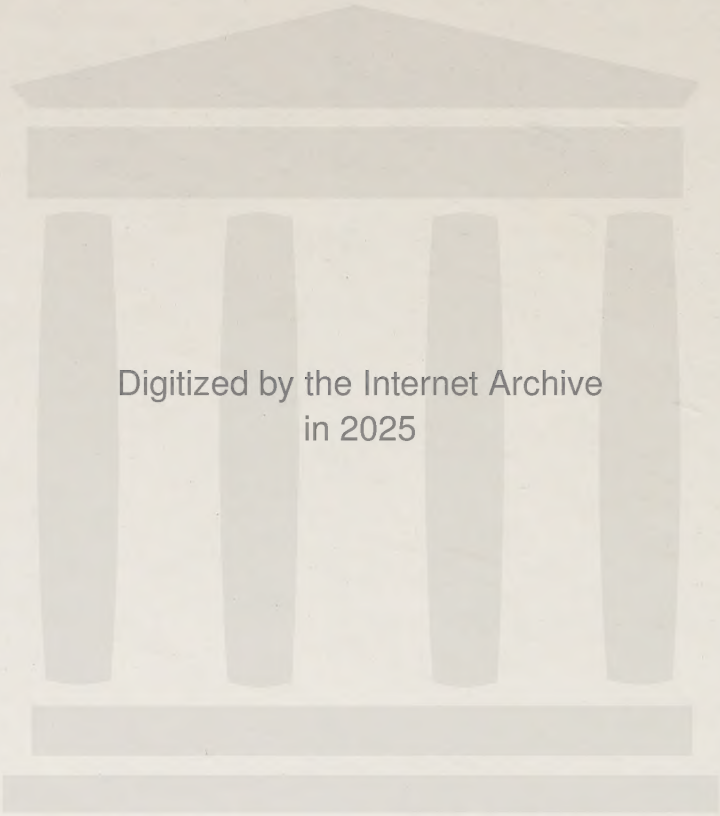
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THE

LOCAL GOVERNMENT ACT, 1888,

WITH THE INCORPORATED PROVISIONS OF THE

MUNICIPAL CORPORATIONS ACT, 1882,

AND OTHER ACTS.

AND THE WHOLE OF THE

STATUTES, RULES AND ORDERS PASSED OR ISSUED SINCE 1888,

RELATING TO THE

POWERS AND DUTIES OF COUNTY COUNCILS,

WITH

NOTES AND INDEX.

Third Edition.

BY

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One of Her Majesty's Counsel,

AND

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PREFACE TO THE THIRD EDITION.

THE Second Edition of this work has long been out of print, and since it appeared there have been large additions to the statute law affecting county councils. The increase in size of this Edition will sufficiently indicate the extent of such legislation.

It has been thought convenient to divide the work into Four Parts. The First deals with the Local Government Act, 1888; and the notes to the several sections of that Act have been carefully revised and in many cases re-written. The Second Part contains the incorporated provisions of the Municipal Corporations Act, 1882, the Ballot Act, 1872, the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and other statutes. The notes to these have also been carefully revised and brought down to date. The Third Part contains the statutes passed since the Local Government Act, 1888, in so far as these relate to the powers and duties of county councils. The Fourth Part contains the existing Statutory Rules and Orders affecting county councils, arranged in alphabetical order of the subjects to which they relate, with the explanatory circulars issued with them. The Third and Fourth Parts, and the notes to them, are of course an addition to the original work.

It was at one time in the contemplation of the Authors to include in the Third Part all the statutes relating to county

councils other than those set out in the First and Second Parts. It was found, however, that this would add greatly to the bulk of the volume, and the Authors have therefore, for the present, limited the Third Part as above stated.

Care has been taken to note every decided case down to the date of publication, and no pains have been spared to render the Index and Tables of Statutes and Cases complete and reliable.

A. M.
T. R. C. D.

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(51 & 52 VICT. CAP. 41.)

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ADDENDA.

Page 125, after the reference to "*Worcestershire County Council* v. *Worcester Union*," add :—"As to the rating of the official residence of the chief constable of a county, see *Leicestershire County Council* v. *Leicester Assessment Committee*, Times, April 23rd, 1898."

Page 263, after the reference to "*Burnett* v. *Berry*," add :—"This case was followed in *Jones* v. *Walters*, 78 L. T. (N.S) 167 ; 14 T. L. R. 265."

Page 531, at end of note (*u*) add :—"This view of the commissioners was upheld by the court in *Cumberland County Council* v. *Commissioners of Inland Revenue*, Times, May 14th, 1898."

Page 619, add note to s. 22 of Local Government Act, 1894 :—"Where a person, who held the office of clerk to the justices for a division of a county, accepted the office of mayor, which, under this section, carried with it the position of justice, it was held that by his acceptance of the latter office he vacated the office of clerk to the justices. (*Reg.* v. *Douglas*, [1898] 1 Q. B. 560 ; 67 L. J. Q. B. 406 ; 78 L. T. (N.S.) 198 ; 62 J. P. 277.)"

PART I.

THE LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

(51 & 52 Vict. Cap. 41.)

An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith. [13th August, 1888.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Part I.—County Councils.

Constitution of County Council.

Establishment of county council.

1. A council shall be established in every administrative county as defined by this Act, and be entrusted with the management of the administrative and financial business of that county, and shall consist of the chairman, aldermen, and councillors.

This section contains in brief a statement of the effect of the Act. Its object is to create in every county a council elected by the persons registered as county electors. Such a council is to be elected in every administrative county as defined by s. 100, for some counties are divided and have a council for each division (see s. 46). To this council is transferred the whole of the administrative and financial business formerly exercised by courts of quarter sessions, together with some other powers and duties mentioned in the Act itself. The Act also contemplates the transfer at some future day to the county councils, by means of provisional orders, of many of the powers now exercised by departments of state. See s. 10, *post*. The council is to consist of a chairman, aldermen, and councillors, and its constitution is prescribed by the next section.

Composition and election of council and position of chairman.

2.—(1.) The council of a county and the members thereof shall be constituted and elected and conduct their proceedings in like manner, and be in the like position in all respects, as the council of a borough divided into wards, subject nevertheless to the provisions of this Act, and in particular to the following provisions, that is to say:—

This provision is more fully carried out by s. 75, *post*, which incorporates with this Act the provisions of the Municipal Corporations Act, 1882, as to the constitution and election of the council. These provisions are hereafter

Sect. 2 (1). set out, and the modifications of them which are contained in this section and in s. 75 and elsewhere throughout this Act have been noticed under each section.

NOTE.

(2.) As respects the aldermen or councillors—

(*a.*) Clerks in holy orders and other ministers of religion shall not be disqualified for being elected and being aldermen or councillors ;

This provision prevents the application to county councillors of s. 12, sub-s. (1) (*b*), of the Municipal Corporations Act, 1882, *post*. It may be mentioned here that a woman cannot be elected a member of a county council. *Beresford-Hope* v. *Lady Sandhurst*, 23 Q. B. D. 79 ; 58 L. J. Q. B. 316 ; 61 L. T. (N.S.) 150 ; 37 W. R. 548 ; 53 J. P. 805 ; *De Souza* v. *Cobden*, [1891] 1 Q.B. 687 ; 60 L.J.Q.B. 533 ; 65 L.T.(N.S.) 130 ; 39 W.R. 454 ; 55 J. P. 375, 565 ; 7 T. L. R. 441.

(*b.*) A person shall be qualified to be an alderman or councillor who, though not qualified in manner provided by the Municipal Corporations Act, 1882, as applied by this Act, is a peer owning property in the county, or is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county ;

45 & 46 Vict c. 50.

The qualification of a councillor is that prescribed by s. 11 of the Municipal Corporations Act, 1882, *post*. An alderman must by s. 14 of the same Act be a councillor or a person qualified to be a councllllor.

This provision qualifies two classes of persons to be aldermen or councillors besides those qualified under the Municipal Corporations Act as applied by this Act. These are (1) peers owning property (presumably land, notwithstanding the definition in s. 100, *post*), and (2) ownership voters.

(*c.*) The aldermen shall be called county aldermen, and the councillors shall be called county councillors ; and a county alderman shall not, as such, vote in the election of a county alderman ;

This prevents the application to county aldermen of the Municipal Corporations Act, 1882, s. 60, *post*, which enables aldermen other than outgoing aldermen to vote as members of the council at the election of aldermen. The meaning of the words "as such" is not clear. It has been suggested that they are inserted to provide for the case where an outgoing alderman has been elected a councillor, and ought therefore to be permitted to vote as a councillor. But in such a case by being elected councillor he would have ceased to be an alderman. See *Reg.* v. *Bangor* (*Mayor, etc., of*), 18 Q. B. D. 349 ; 56 L. J. Q. B. 326 ; 56 L. T. (N.S.) 434 ; 35 W. R. 158 ; 51 J. P. 51. It has also been suggested that it was intended to enable a councillor, who had himself been elected alderman, to vote for the other aldermen, but this is very doubtful.

(*d.*) The county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election ; and

In this respect the election of county councillors differs from that of borough councillors, of whom one-third go out of office in each year. See the Municipal Corporations Act, 1882, s. 13, *post*. The date of the triennial election was

originally under this Act November 1st, but the date is now altered to the beginning of March by the 54 & 55 Vict. c. 68, *post*. Sect. 2 (2). NOTE.

(*e*.) The divisions of the county for the purpose of the election of county councillors, shall be called electoral divisions and not wards, and one county councillor only shall be elected for each electoral division:

When a borough is divided into wards, the number of councillors assigned to each ward must be three or a multiple of three, so as to admit of the retirement of one-third in each year. In a county one councillor only is to be returned for each electoral division.

(3.) As respects the number of the county councillors, and the boundaries of the electoral divisions in every county—

(*a*.) The number of the county councillors and their apportionment between each of the boroughs which have sufficient population to return one councillor and the rest of the county, shall be such as the Local Government Board may determine; and

The Local Government Board determined in the first instance the number of the councillors for each county, and apportioned them between boroughs having sufficient population to return one or more members and the rest of the county. Alterations in the number of county councillors and electoral divisions are made under s. 44, *post*.

(*b*.) Any borough returning one councillor only shall be an electoral division; and

(*c*.) In the rest of the county the electoral divisions shall be such as in the case of a borough returning more than one councillor the council of the borough, and in the rest of the county the quarter sessions for the county, may determine, subject in either case to the directions enacted by this Act; and in the case of elections after the first, to any alterations made, in accordance with the said directions, in manner in this Act mentioned:

Where the Local Government Board assign one councillor to a borough that borough is to be an electoral division; where they assign more than one, the council of the borough must divide the borough into electoral divisions. The directions for the constitution of electoral divisions are contained in s. 51, *post*, and the future alteration of the boundaries of electoral divisions is provided for by s. 54, *post*.

(4.) As respects the electors of the county councillors—

The persons entitled to vote at their election shall be, in a borough, the burgesses enrolled in pursuance of the Municipal Corporations Act, 1882, and the Acts amending the same, and elsewhere the persons registered as county electors under the County Electors Act, 1888: 45 & 46 Vict. c. 50. 51 & 52 Vict. c. 10.

In a borough the electors will be the persons whose names are on the burgess roll; in a county the electors will be the persons whose names are on

Sect. 2 (4). Note.

the roll of county electors. The persons who are qualified to be so enrolled are described in the notes to s. 9 of the Municipal Corporations Act, 1882, *post*.

Notwithstanding the provision in the text, a person whose name is on the register of county electors may not be entitled to vote. Thus it has been held that an elector, though registered in more than one division of the same county, is not entitled to vote in more than one division of the same county. *Knill* v. *Towse*, 24 Q. B. D. 186, 697; 59 L. J. Q. B. 455; 63 L. T. (N.S.) 47; 38 W. R. 521; 54 J. P. 789.

(5.) As respects the chairman of the county council—

(*a*.) He shall be called chairman, instead of mayor; and

As to the election of mayor, see the Municipal Corporations Act, 1882, s. 61, *post*. The chairman will not have such precedence in the county as the mayor has in a borough, for s. 15, sub-s. (5), of the Municipal Corporations Act, 1882, is not to apply to him. See s. 75, sub-s. (16) (*b*), *post*.

(*b*.) He shall, by virtue of his office, be a justice of the peace for the county; but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate.

The oaths required by law to be taken by a justice, other than the oath of qualification, are the oath of allegiance and the judicial oath. See 31 & 32 Vict. c. 72, s. 6; 34 & 35 Vict. c. 48. The chairman is to be selected from among the aldermen or councillors or persons qualified to be such, and it will be seen from the notes to s. 9 of the Municipal Corporations Act, 1882, *post*, that a person may be qualified to be a councillor without possessing any property qualification.

(6.) The county council may from time to time appoint a member of the council to be vice-chairman, to hold office during the term of office of the chairman, and subject to any rules made from time to time by the county council, anything authorized or required to be done by, to, or before the chairman may be done by, to, or before such vice-chairman.

The term of office of the chairman is one year. See s. 15 of the Municipal Corporations Act, 1882, *post*.

This provision presumably supersedes s. 16 of the Municipal Corporations Act, 1882, which enables the mayor to appoint a deputy.

The London County Council have power to appoint a paid deputy chairman under s. 88, *post*.

Powers of County Council.

Transfer to county council of administrative business of quarter sessions.

3. There shall be transferred to the council of each county on and after the appointed day, the administrative business of the justices of the county in quarter sessions assembled, that is to say, all business done by the quarter sessions or any committee appointed by the quarter sessions, in respect of the several matters following, namely,—

The appointed day is defined by s. 109, *post*.

Section 28, *post*, provides that the council shall have, as respects business transferred to them from quarter sessions, the same powers, etc., as the quarter sessions or any committee thereof had or were subject to. The same section

enables the county council to delegate their powers and duties to committees or district councils, and in some cases to justices in petty sessions, but this is not to include the power to make a rate or loan. **Section 3.** NOTE.

Section 78, *post*, provides for the construction of Acts relating to business transferred to the county council, and enacts that the transfer of powers and duties under this Act shall not authorize the county council to exercise the powers of a court of record, administer an oath, or perform any judicial business.

(i.) The making, assessing, and levying of county, police, hundred, and all rates, and the application and expenditure thereof, and the making of orders for the payment of sums payable out of any such rate or out of the county stock or county fund, and the preparation and revision of the basis or standard for the county rate ;

The Acts relating to the county rate are the County Rate Act, 1852 (15 & 16 Vict. c. 81), and the County Rate Act, 1866 (29 & 30 Vict. c. 78) ; and see the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), *post*.

County rate.—By the County Rate Act, 1852, s. 2, it is provided that the justices in quarter sessions in every county shall from time to time appoint any number of justices not exceeding eleven, nor less than five, to be a committee for preparing a basis or standard for fair and equal county rates to be founded and prepared rateably and equally according to the full and fair annual value of the property rateable to the relief of the poor in every parish, township, borough, or place, whether parochial or extra-parochial, within the respective limits of the said justices' commissions, or which in any place within such limits not maintaining its own poor, would be liable to be rated if such last-mentioned place were a parish, or of altering or amending such basis or standard from time to time as circumstances may require : provided that in counties containing more than eleven petty sessional divisions the committee may be extended to the actual number of divisions, so that one justice from each division may be selected to act on the committee. A county rate committee is now appointed by the county council under the above section. The committee must not be less than five in number, and it may number eleven, or, if there are more than eleven petty sessional divisions, as many as there are divisions. In the latter case it is apparently still necessary to see that each division is represented on the committee. On the section just quoted it has been decided that tenants in ancient demesne are liable to pay county rates, as they are liable for poor rates, though they are exempt from taxes and tollages granted by Parliament to the Crown. *Reg.* v. *Aylesford* (*Inhabitants of*), 2 E. & E. 538 ; 29 L. J. M. C. 83 ; 25 J. P. 534. It has also been held that in a valuation under the section all property, whether occupied or not, must be included. *Reg.* v. *Hammersmith*, 7 W. R. 524 ; 33 L. T. 183 ; 24 J. P. 387 (followed in *Reg.* v. *Malden*, L. R. 4 Q. B. 326 ; 38 L. J. M. C. 125 ; 33 J. P. 645). The county council must also make the county rate upon all parishes and places liable to contribute to it, the proportion payable by each place being regulated by the basis or standard prepared and revised from time to time by the committee and confirmed by the council. The rate is levied by precepts addressed to the guardians requiring them to pay to the county treasurer the sums due from each parish in their union, and the guardians obtain these sums from the overseers in the same manner as money for the relief of the poor. See 7 & 8 Vict. c. 33.

Police rate.—This rate is made pursuant to 3 & 4 Vict. c. 88, s. 3, for the purpose of defraying the expenses of the county police. It is made on the same

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NOTE.

basis as the county rate, and is levied with it. The same Act provides for the raising of the proportion of the county rate payable by detached parts of other counties and by liberties. Such detached portions are by 7 & 8 Vict. c. 61, s. 1, to be deemed to form part of the county of which they form parts for the purposes of parliamentary elections; and justices had power under 3 & 4 Vict. c. 88, s. 2, and 21 & 22 Vict. c. 68, s. 1, to transfer detached portions from one county to another for the purposes of police. Section 50, sub-s. (1), *post*, contains a saving for transfers made before this Act; such transfers can now be effected by county councils. Liberties are now merged in the administrative county. See s. 48, *post*, which contains provisions as to the police in such liberties.

It should be observed that though the control and management of the police (including the control over the division of the county into police districts: *Ex parte Leicestershire County Council*, [1891] 1 Q. B. 53; 60 L. J. M. C. 45; 64 L. T. (N.S.) 25; 39 W. R. 160; 55 J. P. 87; 7 T. L. R. 61) is entrusted to the standing joint committee under s. 9, *post*, the police rates are made by the council.

Hundred rate.—The hundred rate used to be levied for the purpose of making good compensation for damage by riot pursuant to 7 & 8 Geo. 4, c. 31, and 2 & 3 Will. 4, c. 72. These Acts are now repealed, and such compensation is payable out of the police rate of the district in which the damage was done. See the Riot (Damages) Act, 1886, *infra*, clause (xiv.). A hundred rate may be levied for the purposes of certain main roads and bridges under s. 20 of the Highway Act, 1878, the text of which is set out in the notes to s. 11, sub-s. (13), *post*.

The application and expenditure of these rates will devolve upon the county council. As to the making of orders for the payment of sums out of the county fund (to which all receipts of the county council are to be carried), see s. 68, which also contains provisions for the raising of county contributions. The powers to make a rate cannot be delegated. See s. 28, sub-s. (3), *post*.

(ii.) The borrowing of money;

The borrowing of money by the county council is regulated by s. 69, *post*. In the notes to that section will be found a list of the principal purposes for which money may be borrowed.

The power of borrowing must be exercised by the council and cannot be delegated. See s. 28, sub-s. (3), *post*.

(iii.) The passing of the accounts of and the discharge of the county treasurer;

The duty of the county treasurer to account for sums received and paid by him is regulated by 12 Geo. 2, c. 29, and 15 & 16 Vict. c. 81, s. 50. By the first of these Acts the treasurer must deliver accounts upon oath with vouchers, and when these have been passed by the county council they must be deposited with the clerk of the council and by him kept among the records of the county. The Act also provides for the discharge of the treasurer.

(iv.) Shire halls, county halls, assize courts, judges lodgings, lock-up houses, court houses, justices rooms, police stations, and county buildings, works, and property, subject as to the use of buildings by the quarter sessions and the justices to the provisions of this Act respecting the joint committee of quarter sessions and the county council;

A shire hall, county hall, or other building, lodgings for Her Majesty's judges, may be purchased, built, or repaired under 7 Geo. 4, c. 63. The provisions of that Act are extended by 7 Will. 4 & 1 Vict. c. 24, to the building, altering, and repairing of any shire hall or county hall, or any building used partially as a town hall, in cases where assizes and sessions have been held in a town hall not belonging exclusively to the county. The same Act enables shire halls, etc., to be purchased when the assize town is changed, or to be hired. These Acts are amended by 10 & 11 Vict. c. 28, and by 40 & 41 Vict. c. 21, s. 49. The provisions of 7 Geo. 4, c. 63, are also extended by 2 & 3 Vict. c. 69, in respect of the purchase, etc., of judges' lodgings. Sect. 3 (iv). NOTE.

Lock-up houses are provided for counties under 5 & 6 Vict. c. 109, s. 22, and for two or more counties or boroughs jointly under 11 & 12 Vict. c. 101, and 31 & 32 Vict. c. 22, s. 10. The Act last referred to enables counties and boroughs to contract for the reception in lock-up houses of persons belonging to another jurisdiction. Under 28 & 29 Vict. c. 126, s. 71, certain discontinued prisons may be used as lock-up houses.

Petty sessional court-houses are provided in counties and boroughs under 12 & 13 Vict. c. 18; 31 & 32 Vict. c. 22; 42 & 43 Vict. c. 49, s. 30; 47 & 48 Vict. c. 43, s. 8.

Police stations are provided under 3 & 4 Vict. c. 88, and if unnecessary, may be disposed of under 19 & 20 Vict. c. 69, s. 24, which extends to them the provisions of 7 Geo. 4, c. 18, under which unnecessary prisons might be disposed of.

As to the use of county buildings by sessions and justices, see s. 30, *post*, which relates to the powers of the standing joint committee: s. 64, which vests existing county buildings in the county council: and s. 55, which enables the council to acquire, etc., such halls, buildings, or offices as they may from time to time require, whether within or without their county.

As to the rating of county buildings, see *Middlesex County Council* v. *St. George's Union Assessment Committee*, [1896] 2 Q. B. 143; 65 L. J. M. C. 141; 75 L. T. (N.S.) 153; 44 W. R. 666; 60 J. P. 518; *Worcestershire County Council* v. *Worcester Union*, [1897] 1 Q. B. 480; 66 L. J. Q. B. 323; 76 L. T. (N.S.) 138; 45 W. R. 309; 61 J. P. 244.

(v.) The licensing under any general Act of houses and other places for music or for dancing, and the granting of licences under the Racecourses Licensing Act, 1879; 42 & 43 Vict. c. 18.

There is only one general Act under which quarter sessions had powers relating to music and dancing licences, and that is local in its operation. The Act in question is the Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2, which provides that any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof, without a licence had for that purpose from the quarter sessions, (who are thereby authorized and empowered to grant such licence as they in their discretion shall think proper), shall be deemed a disorderly house or place.

This Act no longer applies to Middlesex, the granting of music and dancing licences by the county council of that county being regulated by 57 & 58 Vict. c. 15, *post*.

Although the county council have no power to administer an oath (see s. 78 (2), *post*), yet in determining applications for music and dancing licences they act judicially, and are bound by the same principles as are binding on justices in determining questions which come before them for judicial decision:

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NOTE.

hence it was held that the presence at the hearing of such an application of certain members of a county council, who had themselves instructed counsel to oppose the application, vitiated the proceedings. *Reg.* v. *London County Council, ex parte Akkersdyk*, [1892] 1 Q. B. 190; 61 L. J. M. C. 75; 66 L. T. (N.S.) 168; 40 W. R. 285; 56 J. P. 8; 8 T. L. R. 175. At the same time, the county council is not a court so as to give to the councillors the immunity of judges in respect of statements made at the licensing meeting. *Royal Aquarium, etc., Society* v. *Parkinson*, [1892] 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. (N.S.) 513; 40 W. R. 450; 56 J. P. 404; 8 T. L. R. 352. And it has been doubted whether the rule as to disqualification from interest, applicable to purely judicial bodies, applies to the proceedings at such a meeting merely by reason of the fact that the council, which is an administrative body, exercises functions involving something of a judicial character. *Reg.* v. *London County Council, ex parte Edwardes*, 71 L. T. (N.S.) 638.

The Racecourses Licensing Act, 1879 (42 & 43 Vict. c. 18), provides that it shall not be lawful that any horse race be held or take place within a radius of ten miles from Charing Cross, unless within a place for which a licence for horse racing has been obtained. The power and duty of granting licences under this Act devolve on the county councils in the metropolitan area.

Applications under the above Acts had to be made at the Michaelmas quarter sessions; as to the time at which they should be made to a county council, see s. 78 (2), *post*.

(vi.) The provision, enlargement, maintenance, management, and visitation of and other dealing with asylums for pauper lunatics;

Lunatic asylums are provided for counties and boroughs under the Lunacy Act, 1890 (53 & 54 Vict. c. 5), which repeals the earlier statutes, and is itself amended by the Lunacy Act, 1891 (54 & 55 Vict. c. 65). The parts of these Acts particularly affecting county councils are set out *post*; for the Acts in full, with notes, the reader is referred to *Archbold's Law of Lunacy* (4th ed.). Visiting committees are appointed under the Act of 1890.

It should be observed that the text deals only with pauper lunatics. As to the appointment by the justices of visitors of licensed houses, see the Lunacy Act, 1890, ss. 177—182.

(vii.) The establishment and maintenance of and the contribution to reformatory and industrial schools;

The Acts relating to reformatories and industrial schools, so far as here material, are the 29 & 30 Vict. cc. 117, 118. Under these Acts a prison authority (viz., as respects county prisons the justices in quarter sessions) may contract with the managers of a certified reformatory school, or of an industrial school, for the reception and maintenance therein of offenders whose detention is ordered by quarter sessions or justices. Such an authority may contribute towards the alteration, enlargement, or rebuilding of such a school, or towards the support of the inmates, or towards its management, or towards its building, etc., with the approval of a Secretary of State. By 35 & 36 Vict. c. 21, a prison authority are empowered themselves to undertake anything towards which they may contribute under the Act first mentioned. Under 37 & 38 Vict. c. 47, a prison authority are enabled to borrow money for the purposes of industrial and reformatory schools. The county council now have the powers of a prison authority.

There are other Acts relating to reformatory and industrial schools, but these do not affect the powers hereby transferred to county councils. See 54 & 55 Vict. c. 23 ; 56 & 57 Vict. c. 48 ; 57 & 58 Vict. c. 33. **Sect. 3 (vii).** NOTE.

(viii.) Bridges and roads repairable with bridges, and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority ; 41 & 42 Vict. c. 77.

By the Statute of Bridges, 22 Hen. 8, c. 5, it was provided that all public bridges, with the highway for a distance of 300 feet from each end of the bridge, should be repaired by the quarter sessions. This applied to every public bridge in the county, the power and duties of the justices being regulated by the Act already mentioned, and by 1 Anne, stat. 1, c. 18, and 12 Geo. 2, c. 29. Power to widen, improve, and alter the situation of county bridges is given by 14 Geo. 2, c. 33 ; 43 Geo. 3, c. 59 ; 52 Geo. 3, c. 110 ; 54 Geo. 3, c. 90 ; 55 Geo. 3, c. 143 ; 5 & 6 Will. 4, c. 50, ss. 21, 22 ; 4 & 5 Vict. c. 49, etc. By the 43 Geo. 3, c. 59, it is provided that no bridge thereafter to be erected by any private person or body corporate should be deemed to be a county bridge repairable by the county unless it were erected under the direction or to the satisfaction of the county surveyor. By 5 & 6 Will. 4, c. 50, s. 21, if any bridge be built after 1836, which is or shall be repairable by the county, all highways leading to, passing over, and next adjoining to such bridge, are to be repaired by the parish, etc., previously bound to repair them. By 33 & 34 Vict. c. 73, s. 12, where a turnpike road shall have become an ordinary highway, all bridges previously repaired by the turnpike trustees are to become county bridges, and be kept in repair accordingly ; but such bridges are to be deemed to have been erected subsequently to the 5 & 6 Will. 4, c. 50. By the 41 & 42 Vict. c. 77, s. 21, any bridge erected before 1878, in any county, without such superintendence as is required by 43 Geo. 3, c. 59, and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority think fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair. By s. 22 of the same Act the county authority may make such contributions towards the cost of any bridge to be thereafter erected, after the same has been certified in accordance with the provisions of 43 Geo. 3, c. 59, as a proper bridge to be maintained by the inhabitants of the county ; so always that such contribution shall not exceed one-half of the cost of erecting such bridge. By 43 & 44 Vict. c. 5, the county authority may borrow on mortgage of the county rate for the purpose of contributing towards the cost of a bridge under s. 22 of the 41 & 42 Vict. c. 77. By 44 & 45 Vict. c. 14, county authorities in South Wales were enabled to take over and contribute towards certain bridges. The 54 & 55 Vict. c. 63 (*post*), enables county councils to make agreements with one another or with highway authorities for the construction, reconstruction, alteration, or improvement or the freeing from tolls of any bridge, including the approaches thereto, wholly or partly within the jurisdiction of any one or more of the agreeing authorities. By s. 6 of this Act, *post*, p. 17, the county council have power to purchase or take over existing bridges, not being at present county bridges, and to erect new bridges.

The 41 & 42 Vict. c. 77, conferred the following powers upon a county authority, and these powers, so far as they are now exercisable, are transferred to the county council :—Enforcing performance of duty by defaulting highway authority, s. 10 ; declaring highway to be a main road, s. 15 ; reducing main road to status of ordinary highway, s. 16 ; directing form of accounts for maintenance of main roads, s. 18 ; power to declare main roads repairable by

Sect. 3 (viii). NOTE. the hundred in certain cases, s. 20; accepting bridges as county bridges, s. 21; contributing towards the cost of erecting county bridges, s. 22; reviving liability to repair highways discontinued as unnecessary, s. 24; making bye-laws, s. 26; authorizing use of locomotives of certain sizes and weights, s. 28; making bye-laws as to hours for use of locomotives, s. 31; licensing locomotives, s. 32. The provisions as to locomotives have been amended by the Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), which is set out *post*.

(ix.) The tables of fees to be taken by and the costs to be allowed to any inspector, analyst, or person holding any office in the county other than the clerk of the peace and the clerks of the justices;

By the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 47, inspectors of weights and measures were to take the fees fixed by the county authority, not exceeding the fees mentioned in the schedule to that Act, and to account for them to the county authority. That section is now repealed by 52 & 53 Vict. c. 21, s. 13, *post*, under which inspectors are to take the fees therein mentioned and no others, and to account for the same to the county council.

Subsequent Acts relating to weights and measures (55 & 56 Vict. c. 18, and 56 & 57 Vict. c. 19) impose upon county councils duties other than those mentioned in the text. These Acts, and also the Weights and Measures (Metric System) Act, 1897 (60 & 61 Vict. c. 46), are set out *post*.

The analyst is appointed under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 10, but the Act is silent as to any table of fees or costs, as the cost of analysis of any article of food or drug is fixed by s. 12. Under the Fertilizers and Feeding Stuffs Act, 1893 (56 & 57 Vict. c. 56), s. 4, *post*, county councils are required to appoint analysts for the purposes of that Act.

It is doubtful whether a parish constable is an officer holding office in the county, but it is submitted that he is, and that the county council must fix the fees and allowances payable to such constables under 5 & 6 Vict. c. 109, s. 17; 13 & 14 Vict. c. 20, s. 2; 35 & 36 Vict. c. 92, s. 11.

For the fees payable to inspectors of gas meters, see 22 & 23 Vict. c. 66, s. 4.

(x.) The appointment, removal, and determination of salaries, of the county treasurer, the county surveyor, the public analysts, any officer under the Explosives Act, 1875, and any officers whose remuneration is paid out of the county rate other than the clerk of the peace and the clerks of the justices;

38 & 38 Vict. c. 17.

The county treasurer is appointed pursuant to 12 Geo. 2, c. 29, s. 6. He must give security under that Act to be accountable for the moneys paid to him. He is removable at pleasure (*ib.* s. 11). His remuneration is in the discretion of the council. 55 Geo. 3, c. 51, s. 17.

The county surveyor is not appointed pursuant to any statute, though by the Statute of Bridges, 22 Hen. 8, c. 5, s. 3, justices are empowered to appoint surveyors for the repair of bridges. The county surveyor is referred to in other statutes, such as those relating to highways, but none of those Acts refer to his appointment or remuneration.

The public analysts are appointed under 38 & 39 Vict. c. 63, s. 10, at such rates of remuneration as may be agreed upon. See s. 39, *post*, as to analysts in the smaller boroughs.

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The county council is the local authority for the administration of the Explosives Act, 1875 (38 & 39 Vict. c. 17) (see s. 7 (*b*), p. 18, *post*), and it is necessary for them to appoint officers under that Act. But the provision in the text relates to the powers of quarter sessions, and the officer here referred to as being appointed by quarter sessions is a person whose duty it is to inspect any wharf, carriage, boat, etc., having explosives *in transitu*. See s. 75 of the Act.

The other officers referred to in the section include clerks and servants necessarily employed with reference to county business and in county offices.

It has been held that the provision in the text does not apply to coroners: *Ex parte London County Council*, [1892] 1 Q. B. 33; 61 L. J. Q. B. 27; 65 L. T. (N.S.) 614; 56 J. P. 279; 8 T. L. R. 24. See further as to coroners the notes to s. 5, *post*.

(xi.) The salary of any coroner whose salary is payable out of the county rate, the fees, allowances, and disbursements allowed to be paid by any such coroner, and the division of the county into coroners' districts, and the assignment of such districts;

All county coroners are paid out of the county rate. 23 & 24 Vict. c. 116, s. 4, provides for the payment of the coroner's salary, and its revision from time to time, having regard to the number of inquests held. By the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 25, as applied by this Act, the county council may from time to time make, vary, and alter a schedule of fees, allowances, and disbursements, which, on the holding of an inquest, may lawfully be paid and made by the coroner holding such inquest (other than the fees payable to medical witnesses in pursuance of that Act). By s. 27 of the same Act every coroner is required within four months after holding an inquest to lay his accounts of all sums paid by him before the county council. The Coroners Act, 1892 (55 & 56 Vict. c. 56), *post*, enables a coroner to appoint a deputy with the approval of the chairman of the county council.

Districts are assigned to coroners under 7 & 8 Vict. c. 92, s. 5, as amended by this Act. See ss. 5, 38, 39, 114, *post*.

For the purposes of the Coroners Acts the ridings of Yorkshire are (from April 1st, 1898) separate counties, and the county council of each riding is, exclusively, the county authority: Yorkshire Coroners Act, 1897 (60 & 61 Vict. c. 39), *post*.

As to the right of a coroner to the payment of his salary after the division of his district, see *Baxter* v. *London County Council*, 63 L. T. (N.S.) 767; 55 J. P. 391.

The provisions in the text do not apply to county boroughs. See s. 34, *post*.

(xii.) The division of the county into polling districts for the purposes of parliamentary elections, the appointment of places of election, the places of holding courts for the revision of the lists of voters, and the costs of and other matters to be done for the registration of parliamentary voters;

It will be the duty of a county council, under 30 & 31 Vict. c. 102, s. 34, to divide their county into polling districts, and assign to each district a polling place in such manner, as far as practicable, as to enable each voter to have a polling place within a convenient distance of his residence . . . and to name the polling places at which the revising barristers are to hold their courts. This power may be exercised from time to time as may be found

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necessary, 31 & 32 Vict. c. 58, s. 18. See also 35 & 36 Vict. c. 33, s. 5; 46 & 47 Vict. c. 51, ss. 47, 68 (2), 69 (9); 48 & 49 Vict. c. 15, ss. 4, 13. And see as to county boroughs, s. 34, sub-s. (6), *post*.

As to the expenses and remuneration of clerks of the peace, town clerks, returning officers, overseers, relieving officers, etc., in connection with the registration of voters, see 6 & 7 Vict. c. 18, ss. 54, 55, 57; 30 & 31 Vict. c. 102, s. 31; 31 & 32 Vict. c. 58, ss. 23, 31, 32; 41 & 42 Vict. c. 26, s. 30; 48 & 49 Vict. c. 15, ss. 8, 14; 51 Vict. c. 10, ss. 8, 9, 11.

It is impossible in the space at disposal in a work of this kind to do more than enumerate the statutory provisions, for full details respecting which the reader is referred to the recent edition of Messrs. Mackenzie and Lushington's work on the Registration of Voters.

(xiii.) The execution as local authority of the Acts relating to contagious diseases of animals, to destructive insects, to fish conservancy, to wild birds, to weights and measures, and to gas meters, and of the Local Stamp Act, 1869;

32 & 33 Vict. c. 49.

The Contagious Diseases (Animals) Acts were repealed and consolidated by the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), except as to 41 & 42 Vict. c. 74, s. 34, and 49 & 50 Vict. c. 32, s. 9. It is provided by s. 39, *post*, that nothing in that section shall transfer to the county council any powers, duties, or liabilities under s. 34 of the 41 & 42 Vict. c. 74, as amended by s. 9 of the 49 & 50 Vict. c. 32. This provision is explained in the note to s. 39, *post*. The Act of 1894 has been amended by the Diseases of Animals Act, 1896 (59 & 60 Vict. c. 15). These Acts are set out *post*.

The Destructive Insects Act is the 40 & 41 Vict. c. 68. Under it the county council as local authority might be ordered by the Privy Council to make compensation for any crops removed or destroyed for the purpose of preventing the spreading of the Colorado beetle.

The county council have the power of appointing conservators of rivers and of applying to the Board of Trade to form fishery districts under 24 & 25 Vict. c. 109, s. 33; 28 & 29 Vict. c. 121, ss. 4 to 19; 36 & 37 Vict. c. 71, ss. 9, 10, 26 to 33; 41 & 42 Vict. c. 39, s. 6; 47 & 48 Vict. c. 11, s. 2; 49 & 50 Vict. c. 39.

By the Wild Birds Protection Act, 1880 (43 & 44 Vict. c. 35), s. 8, a Secretary of State may upon application by the county justices (now the county council) extend or vary the time during which the killing and taking of wild birds or any of them is prohibited by that Act. The Act is amended by 44 & 45 Vict. c. 51, but that Act does not confer any additional power on the county council. It is further provided by 57 & 58 Vict. c. 24, *post*, that a Secretary of State may, upon application of a county council, by order prohibit the taking or destroying of wild birds' eggs in any year or years in any place or places within a county, or the taking or destroying of the eggs of any specified kind of wild birds within the county or part thereof as recommended by the county council. Under the same Act an order may also be made applying the principal Act within any county to any species of wild bird not included in the schedule to the principal Act. By the 59 & 60 Vict. c. 56, *post*, an order may also be made extending the close time for particular birds to the whole or any part of the year and enabling the council of a county borough to exercise the same powers as a county council under 57 & 58 Vict. c. 24.

Under the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 40, it is the duty of the county council, as local authority, to provide local standards of weights and measures, and fix the place at which the standards are to be deposited. They must also provide proper means for verifying weights and measures by comparison with the local standards, and for stamping the

weights and measures so verified. The expenses of executing the Act are payable out of the county rate. Two or more county councils may combine as regards either the whole or any part of the areas within their jurisdiction for all or any of the purposes of the Act upon such terms and in such manner as may be from time to time mutually agreed upon. The county council may under s. 53 make bye-laws as to the local verification of weights and measures. The county council also appoint an inspector under s. 43, and fix the times and places at which he is to attend. By s. 39, *post*, in the boroughs having a population of less than 10,000, such boroughs are, for the purposes of the Weights and Measures Acts, to form part of the county. The Act of 1878 has been amended by 52 & 53 Vict. c. 21 ; 55 & 56 Vict. c. 18 ; 56 & 57 Vict. c. 19 ; and 60 & 61 Vict. c. 46 ; some of these Acts impose important duties on county councils ; they are set out *post*.

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NOTE.

The Acts relating to gas meters are 22 & 23 Vict. c. 66, and 23 & 24 Vict. c. 146. By these Acts models of gas holders measuring the cubic foot are to be deposited with the (county council) at such places as they shall direct. The council are also to appoint inspectors. The expenses are to be paid out of the county rates. By s. 39, *post*, smaller boroughs are to form part of the county for the purposes of these Acts. The verification of local and working standards used by a county council in testing meters is regulated by the Weights and Measures Acts, 1878 and 1889 ; see s. 15 of the latter Act.

The Local Stamp Act is the 32 & 33 Vict. c. 49. It provides that when all the clerks of petty and special sessions and justices within a county are paid by salary, the justices in quarter sessions may order that all fees and penalties payable to the treasurer be paid and received by stamps. Questions as to the application of the Act are to be referred to and determined by the Standing Joint Committee under s. 30 (3), *post*, p. 66. The expenses of the Act are to be defrayed out of the county rate.

(xiv.) Any matters arising under the Riot (Damages) Act, 1886 ; 49 & 50 Vict. c. 38.

The county council thus succeed to the powers and duties of the quarter sessions under the Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38). Compensation payable under that Act to any person whose property has been injured, stolen, or destroyed by rioters will be paid by the council out of the police rate.

These matters are not transferred to the council of the county of London. See s. 93, sub-s. (2), *post*.

(xv.) The registration of rules of scientific societies under the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter thirty-six ; the registration of charitable gifts under the Act of the session of the fifty-second year of the reign of George the Third, chapter one hundred and two ; the certifying and recording of places of religious worship under the Act of the session of the fifty-second year of the reign of George the Third, chapter one hundred and fifty-five ; the confirmation and record of the rules of loan societies under the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and ten ; and

The 6 & 7 Vict. c. 36, is the Act under which scientific and literary societies are entitled to exemption from payment of rates. In order to entitle any

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society to exemption under the Act a copy of its rules must be submitted to the barrister appointed to certify the rules of friendly societies, who inquires and certifies whether the society is within the Act. His certificate, given upon the copy of the rules, is afterwards affirmed and allowed by the (county council) and filed by the clerk of the (council). The central office under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), is now substituted for the barrister above mentioned. See s. 2 of that Act.

The 52 Geo. 3, c. 102, provides that a memorial or statement of the real and personal estate, and of the income, investment, and objects of all charities and charitable donations for the benefit of the poor or other persons in England and Wales, together with the names of the founders, the names of the persons possessing the deeds, wills, or other instruments by which the charities were founded, and the names of the trustees shall, within twelve months after execution of such deeds, wills, etc., be registered in the office of the clerk of the (county council).

The 52 Geo. 3, c. 155, s. 2, provides that no congregation or assembly for religious worship of protestants (at which there shall be present more than twenty persons besides the immediate family and servants of the person in whose house or upon whose premises such meeting, assembly, or congregation shall be held) shall be permitted or allowed, if the same shall not have been duly certified to the bishop of the diocese, or to the archdeacon, or to the (county council). The provisions of the Act were extended to places of worship of Roman Catholics by the 2 & 3 Will. 4, c. 115, and of Jews by the 9 & 10 Vict. c. 59, s. 2. The 18 & 19 Vict. c. 81, s. 1, exempts certain congregations or assemblies from its provisions. It should be observed also that these places may now be registered and recorded by the Registrar-General, and in these cases they need not be registered under the 52 Geo. 3, c. 155 (see 18 & 19 Vict. c. 81).

By the 3 & 4 Vict. c. 110, s. 4, it is provided that copies of the rules of every loan society are to be submitted to the barrister appointed to certify the rules of savings banks, who is to certify whether such rules are in conformity with law, and a transcript as certified is to be sent to the clerk of the peace and allowed and confirmed by the (county council). The central office under the Friendly Societies Act, 1896, is now substituted for the barrister. See s. 2 of that Act.

(xvi.) Any other business transferred by this Act.

See Part II. of this Act, *post*.

For the general provisions as to powers transfered to county councils, see ss. 28, 29, *post*.

Transfer of certain powers under local Acts.

4. Where it appears to the Local Government Board that any powers, duties, or liabilities of any quarter sessions or justices, or any committee thereof, under any local Act are similar in character to the powers, duties, and liabilities transferred to county councils by this Act, or relate to property transferred to a county council by this Act, the Board may, if they think fit, make a provisional order for transferring such powers, duties, and liabilities to the county council.

This section provides for the transfer to county councils of powers, duties, and liabilities similar to those transferred by the last section where these depend on local Acts, or relate to property transferred to a county council by this Act. A transfer under this section is to be effected by Provisional

Order of the Local Government Board. As to the making of a Provisional Order, see s. 87, *post*.

Section 4.

NOTE.

Appointment of coroners by county council.

5.—(1.) After the appointed day a coroner for a county shall not be elected by the freeholders of the county, and on any vacancy occurring in the office of a coroner for a county, who is elected to that office in pursuance of a writ *de coronatore eligendo*, a like writ for the election of a successor shall be directed to the county council of the county instead of to the sheriff, and the county council shall thereupon appoint a fit person, not being a county alderman or county councillor, to fill such office, and in the case of a county divided into coroners' districts shall assign him a district; and any person so appointed shall have like powers and duties, and be entitled to like remuneration, as if he had been elected coroner for the county by the freeholders thereof.

For the meaning of the phrase "appointed day," see s. 109, *post*.

Formerly the county coroner was elected by the freeholders of the county. A writ *de coronatore eligendo* was issued to the sheriff, who thereupon held an election. See the sections of the Coroners Act, 1887 (50 & 51 Vict. c. 71), repealed by sub-s. (6), *infra*. The writ is now directed to the county council. It should be observed that this section only applies to such a coroner as would previously have been elected by the freeholders, not to the coroner for a liberty or other franchise. *Ex parte London County Council*, [1892] 1 Q. B. 33; 61 L. J. Q. B. 27; 64 L. T. (N.S.) 614; 56 J. P. 279; 8 T. L. R. 24.

As an alderman or councillor may not be appointed, a member of the council must resign if he desires to become a candidate for the coronership. This will involve payment of the usual fine under the Municipal Corporations Act, 1882, s. 36, *post*.

The duty of assigning coroners' districts devolves upon the county councils under s. 3 (xi.), *ante*. See further as to coroners' districts sub-s. (3), *infra*, and s. 114 as to coroners' districts situate in the county of London. The area of a borough with a population under 10,000 is to be subject to the authority of the county coroner, and may be annexed by the county council to a coroner's district of the county. See s. 38, *post*.

As to the effect of the divisions of a district on a coroner's right to receive his salary fixed at the last revision, see *Baxter* v. *London County Council*, 63 L. T. (N.S.) 767; 55 J. P. 391. As to the appointment of a deputy coroner, see the Coroners Act, 1892 (55 & 56 Vict. c. 56), *post*.

(2.) Where the district of any such coroner is situate wholly within any administrative county, the council of that county shall, subject as hereinafter mentioned, appoint the coroner.

For the definition of "administrative county," see s. 100, *post*.

The case of a district extending into two administrative counties is provided for by the next sub-section.

(3.) Where the district of any such coroner is situate partly in one and partly in another administrative county forming part of an entire county, the joint committee for the entire county may arrange for the alteration in manner provided by law of the district,

Sect. 5 (3). so that, on the next avoidance of the office of coroner of that district, or at any earlier time fixed by the joint committee when the alteration is made, the coroners' district shall not be situate in more than one administrative county.

The joint committee here referred to is the committee of the two or more county councils appointed under s. 46, *post*.

The manner provided by law is by petition to Her Majesty praying that an alteration be made in the division of the county into coroners' districts. Notice of the petition is given to the coroners of the county. If the divisions are altered to the prejudice of any of the coroners, compensation must be paid to him (7 & 8 Vict. c. 92). The alteration may take effect on the next avoidance of the office of coroner of the district, or at an earlier period fixed by the joint committee.

As to the application of this sub-section to the ridings of Yorkshire, see the Yorkshire Coroners Act, 1897 (60 & 61 Vict. c. 39), *post*.

(4.) Until such arrangement is made, the joint committee for the entire county shall appoint the coroner for the said district, and the amount payable in respect of the salary, fees, and expenses of such coroner shall be defrayed in like manner as costs of the joint committee are directed by this Act to be defrayed.

As to the joint committee and their expenses, see s. 46, *post*. As to the salary, fees, and expenses of the coroner, see the note to s. 3 (xi.), *ante*.

(5.) Nothing in this Act respecting the appointment of a coroner shall alter the jurisdiction of a coroner for the entire county, or any power of removing such coroner, whether by writ *de coronatore exonerando* or otherwise, and all writs for the election or removal of a coroner shall be altered so as to give effect to this section.

Though a coroner has a district assigned to him, he is nevertheless coroner for the entire county. See 7 & 8 Vict. c. 92, s. 19.

A coroner is chosen for life, but he may be removed either by being made sheriff or chosen verderer, which are offices incompatible with that of coroner, or by the writ *de coronatore exonerando* for a cause to be therein assigned, as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it. Fitz. N. B. 163, 184; 2 Inst. 132. By the Coroners Act, 1887 (50 & 51 Vict. c. 71, s. 8), the Lord Chancellor may remove any coroner for inability or misbehaviour in the discharge of his duty. An instance of an application to remove a coroner on the ground of misbehaviour is *In re the Coroner for West Surrey*, 47 J. P. 166. By the same section a coroner who is guilty of extortion, or of corruption, or of wilful neglect of his duty, or of misbehaviour in the discharge of his duty, shall be guilty of a misdemeanor, and, in addition to any other punishment, may, unless his office of coroner is annexed to any other office, be adjudged by the court before whom he is so convicted to be removed from his office. By s. 10 a coroner shall not by himself or his partner, directly or indirectly, act as solicitor in the prosecution or defence of a person for an offence for which such person is charged by an inquisition taken before him as coroner, whether such person is tried on that inquisition or on any bill

of indictment found by a grand jury. If a coroner acts in contravention of this section he shall be deemed guilty of misbehaviour in the discharge of his duty. Sect. 5 (5). NOTE.

(6.) Sections eleven and fourteen and the First Schedule of the Coroners Act, 1887, and any other enactment relating to the election of a coroner for a county by the freeholders of such county or any district thereof, are hereby repealed as from the appointed day, without prejudice to anything done or suffered, or any legal proceeding commenced or penalty incurred before such repeal takes effect. 50 & 51 Vict. c. 71.

For the meaning of the phrase "appointed day," see s. 109, *post*.

The repealed sections of the Coroners Act, 1887, are those which regulate the election of a coroner by the freeholders.

(7.) A person who holds the office of coroner shall not be qualified to be elected as a county alderman or county councillor for the county for which he is a coroner.

By sub-s. (1) a person who is an alderman or councillor may not be elected coroner for the county. This sub-section provides that a county coroner shall not be qualified to be elected an alderman or councillor.

6. The county council shall have power to purchase, or take over on terms to be agreed on, existing bridges not being at present county bridges, and to erect new bridges, and to maintain, repair, and improve any bridges so purchased, taken over, or erected. Power of council as to bridges.

In the note to s. 3 (viii.) the public bridges which are not county bridges have been mentioned. These are for the most part bridges which have been built since the passing of the 43 Geo. 3, c. 59, s. 5, and without such superintendence as is provided by that section, and which have not been taken over by the county under 41 & 42 Vict. c. 77, s. 21. Such bridges may now be taken over on such terms as may be agreed upon, though it is not quite clear who are to be the other parties to the agreement, unless it is some person or local authority now liable to repair the bridges. In addition to these bridges there are bridges built by private persons or bodies which have never been dedicated to public use, though the public may have used them by permission or on payment of toll. The county council may purchase or take over such bridges on terms to be agreed on.

It is further provided by the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), that county councils and highway authorities may enter into agreements in relation to the construction, etc., of bridges. This Act is set out, *post*.

7. There shall be transferred to the county council on and after the appointed day the business of the justices of the county out of session— Transfer to county council of certain powers of justices out of session.

(*a.*) in respect of the licensing of houses or places for the public performance of stage plays, and

(*b.*) in respect of the execution as local authority of the Explosives Act, 1875. 38 & 39 Vict. c. 17.

As to the transfer to the county council of similar powers formerly vested in borough justices, see s. 36, *post*, p. 82.

Houses or places for the performance of stage plays are licensed under

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6 & 7 Vict. c. 68. The licences were formerly granted by the justices of a division in special sessions, the sessions being convened by the clerk. It is difficult to apply such a provision to the county council, for it can hardly be contemplated that a special meeting of the county council must be called to hear an application for a theatre licence. The difficulty is frequently avoided by delegating this duty under s. 28, *post*.

The Explosives Act, 1875, is the 38 & 39 Vict. c. 17. Under that Act the local authority were the justices in petty sessions (except in the city of London, the metropolis, boroughs, and harbours within the jurisdiction of harbour authorities). In the metropolis the local authority was the Metropolitan Board of Works, whose powers and duties are now transferred to the London County Council. The duties of local authorities under the Act cannot here be stated in detail. They relate to (1) the manufacture, (2) keeping, (3) sale, (4) transport, and (5) importation of explosives; and they include the granting of licences and the registration of premises for the manufacture, keeping, etc., of explosives.

It is provided by s. 28, *post*, that the county council may delegate their powers under the Act to any committee or district council, and may delegate their powers under the above-mentioned Acts to justices in petty sessions.

Reservation of business to quarter sessions.

8.—(1.) Nothing in this Act shall transfer to a county council any business of the quarter sessions or justices in relation to appeals by any overseers or persons against the basis or standard for the county rate or against that or any other rate.

This sub-section reserves to quarter sessions their powers and duties of hearing appeals against rates generally, and also appeals against the county rate basis. It will be remembered that by s. 3 (i.), *ante*, the duty of preparing the basis is transferred to the county council.

As to appeals against the county rate basis, and against the county rate, see 15 & 16 Vict. c. 81, ss. 17 and 22, and Local Government Act, 1894, s. 6 (1) (*c*) (i), *post*.

(2.) All business of the quarter sessions or any committee thereof not transferred by or in pursuance of this Act to the county council shall be reserved to and transacted by the quarter sessions or committee thereof in the same manner, as far as circumstances admit, as if this Act had not passed.

This is a general reservation in respect of business not transferred to the county council. It was really unnecessary, and was probably inserted *ex cautelâ*.

Powers as to police.

9.—(1.) The powers, duties, and liabilities of quarter sessions and of justices out of session with respect to the county police shall, on and after the appointed day, vest in and attach to the quarter sessions and the county council jointly, and be exercised and discharged through the standing joint committee of the quarter sessions and county council appointed as herein-after mentioned:

The Acts relating to county police are 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; 19 & 20 Vict. c. 69; 20 & 21 Vict. c. 2; 22 & 23 Vict. c. 32; 28 & 29 Vict.

c. 35 ; 53 & 54 Vict. c. 45 ; and 56 & 57 Vict. c. 10. The duty of appointing the chief constable, and the general control of the police in counties, which has formerly been exercised by the county justices, is now exercised by the standing joint committee appointed under s. 30, *post*. Sect. 9 (2). NOTE.

It has been held that the control over the division of a county into police districts is by this section vested in the standing joint committee. *Ex parte Leicestershire County Council*, [1891] 1 Q. B. 53 ; 60 L. J. M. C. 45 ; 64 L. T. (N. S.) 25 ; 39 W. R. 160 ; 55 J. P. 87 ; 7 T. L. R. 61.

It should be observed that s. 33, *post*, provides for the continuance of one police force for any county borough or other borough and any county where these have been united for the purposes of a police force. In the smaller boroughs the existing police forces are abolished by s. 39, *post*, which provides that for the purposes of the Acts relating to county police such boroughs are to form part of the counties in which they are situated.

(2.) Provided that the powers conferred by section seven of the County and Borough Police Act, 1856, which requires constables to perform, in addition to their ordinary duties, such duties connected with the police as the quarter sessions may direct or require, shall continue to be exercised by the quarter sessions as well as by the said standing joint committee, and may also be exercised by the county council ; and the said section shall be construed as if the county council and the said standing joint committee were therein mentioned as well as the quarter sessions. 19 & 20 Vict. c. 69.

The 19 & 20 Vict. c. 69, s. 7, provides that constables shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct and require. Justices in general or quarter sessions are still to retain their powers under this section, and the same powers are extended to the standing joint committee appointed under s. 30, *post*, and to the county council.

(3.) Nothing in this Act shall affect the powers, duties, and liabilities of justices of the peace as conservators of the peace, or the obligation of the chief constable or other constables to obey their lawful orders given in that behalf.

This provision was inserted for the purpose of continuing the existing powers of justices as conservators of the peace to issue such orders as they may think necessary to the police for the preservation of the peace, the prevention of offences, and the apprehension of offenders.

10.—(1.) After the passing of this Act it shall be lawful for the Local Government Board to make from time to time a Provisional Order for transferring to county councils— Transfer to county council of powers of certain government departments and other authorities.

(*a.*) Any such powers, duties, and liabilities of Her Majesty's Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Education Department, or any other Government Department, as are

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conferred by or in pursuance of any statute and appear to relate to matters arising within the county, and to be of an administrative character : also

(*b.*) Any such powers, duties, and liabilities arising within the county, of any commissioners of sewers, conservators, or other public body, corporate or unincorporate (not being the corporation of a municipal borough or an urban or rural authority, or a school board, and not being a board of guardians), as are conferred by or in pursuance of any statute ;

and such Order shall make such exceptions and modifications as appear to be expedient, and also such provisions as appear necessary or proper for carrying into effect such transfer, and for that purpose may transfer any power vested in Her Majesty in Council :

As to the making of Provisional Orders, see s. 87, *post.*

Without attempting to give an exhaustive list of the powers of Government Departments which might be transferred, the following are the principal of such powers and duties :—

Privy Council.—Powers (now transferred to the *Board of Agriculture*) under the Diseases of Animals Act, the Destructive Insects Act, etc.

Secretary of State.—Powers under the Artizans Dwellings Acts, Burial Acts, etc.

Board of Trade.—Powers under the Pier and Harbour Acts, the Fishery Acts, Electric Lighting Act, Gas and Waterworks Acts, Merchant Shipping Acts, Tramway Acts, etc.

Local Government Board.—Powers under the Public Health Acts, Baths and Washhouses Acts, Artizans Dwellings Acts, Highway Acts, Rivers Pollution Act, etc.

Education Department.—Powers under the Education Acts.

The powers transferred must be such as are conferred by or in pursuance of a statute, and must be of an administrative (*i.e.* as distinguished from a judicial) character.

The statutory powers of public bodies, other than those expressly excepted, may also be transferred by Provisional Order. The most important of these are the powers of commissioners of sewers or drainage boards under the Acts relating to the drainage of land.

(2.) Provided that before any such Order is made the draft thereof shall be approved, if it relates to the powers, duties, or liabilities of a Secretary of State, or the Board of Trade, or any other Government Department, by such Secretary of State, Board, or department, and approved, if it affects the powers, duties, or liabilities of any commissioners, conservators, or body, corporate or unincorporate, by such commissioners, conservators, or body ; and every such Provisional Order shall be of no effect until it is confirmed by Parliament.

This provision renders it necessary that the draft of the Order should be perused and approved by the department or body whose powers are to be transferred, and it makes such approval in effect a condition precedent to the Order.

(3.) If any such powers, duties, or liabilities as are referred to in any Provisional Order under this section arise within two or more counties, they may be transferred to the county councils of such two or more counties jointly, and may be exercised and discharged by a joint committee of such councils. Sect. 10 (3).

As to the appointment and powers of joint committees, see s. 81, *post*.

(4.) The Act of Parliament confirming any Provisional Order made under this section shall be a public general Act.

This provision enables an Order to be made altering the general law in the district to which it relates. It has also the effect of preventing its being treated for purposes of construction as a private or local Act.

11.—(1.) Every road in a county, which is for the time being a main road within the meaning of the Highways and Locomotives (Amendment) Act, 1878, inclusive of every bridge carrying such road if repairable by the highway authority, shall, after the appointed day, be wholly maintained and repaired by the council of the county in which the road is situate, and such council, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, shall have the same powers and be subject to the same duties as a highway board, and may further exercise any powers vested in the council for the purpose of the maintenance and repair of bridges, and the enactments relating to highways and bridges shall apply accordingly; and the county council shall have the same powers as a highway board for preventing and removing obstructions, and for asserting the right of the public to the use and enjoyment of the roadside wastes; and the execution of this section shall be a general county purpose, and the costs thereof shall be charged to the general county account. Entire maintenance of main roads by county council. 41 & 42 Vict c. 77.

Highways, etc., Act, 1878: Main Roads.—The chief provisions of the Highway Act, 1878 (41 & 42 Vict. c. 77), relating to main roads are ss. 13—17. These so far as they are unrepealed are here set out in full.

Section 13. "For the purposes of this Act and subject to its provisions, any road which has, within the period between the thirty-first day of December, one thousand eight hundred and seventy, and the date of the passing of this Act, ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road."

[The remainder of this section is repealed by the Statute Law Revision Act, 1894, having been rendered obsolete by the provisions in the text.]

Section 14. "The following areas shall be deemed to be highway areas for the purpose of this Act; (that is to say,)

"(1) Urban sanitary districts;

"(2) Highway districts;

"(3) Highway parishes not included within any highway district or any urban sanitary district.

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NOTE.

[The expression "urban sanitary districts" as defined by the Act of 1878, did not include quarter sessions boroughs; but these are now included by virtue of ss. 35 (4) and 38 (3), *post*].

Section 15. "Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station or otherwise, such highway authority may apply to the county authority for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and if satisfied that it ought to be a main road shall make an order accordingly.

"A copy of the order so made shall be deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order."

Section 16. ". . . . where it appears to a county authority that any road within their county which has become a main road in pursuance of this Act ought to cease to be a main road and become an ordinary highway, such authority may apply to the Local Government Board for a provisional order declaring that such road has ceased to be a main road and become an ordinary highway.

"The Local Government Board, if of opinion that there is probable cause for an application under this section, shall cause the road to be inspected, and if satisfied that it . . . . . ought to cease to be a main road, and become an ordinary highway, shall make a [*provisional*] order accordingly [*to be confirmed as hereinafter mentioned*].

"All expenses incurred in or incidental to the making or confirmation of any order under this section shall be defrayed by the county authority applying for such order."

[Parts of the above section were repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), and are here omitted. The remainder of the section is amended by s. 4 of the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), *post*, whereby it is provided that s. 16 of the Highways and Locomotives (Amendment) Act, 1878, shall apply to any part of a main road in any county, and so much of that section as requires that any order made thereunder shall be provisional, and shall be confirmed as in the said Act mentioned, is hereby repealed, but no such order shall be made in respect of any main road within a municipal borough without the assent of the council of the said borough having been first obtained].

Section 17. "Where a turnpike road subject to one trust extends into divers counties, such road, for the purposes of this Act, shall be treated as a separate turnpike road in each county through which it passes."

The following cases have been decided on the foregoing sections of the Highways and Locomotives (Amendment) Act, 1878:—

A provision in Turnpike Acts coming into operation before December 31st, 1870, that turnpike trustees shall not spend money or levy toll upon certain portions of turnpike roads does not prevent such portions of the roads from being still turnpike roads on December 31st, 1870, within the meaning of s. 13 of the Highways and Locomotives (Amendment) Act, 1878. So as to an agreement under the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 41, made before December 31st, 1870, between turnpike trustees and a corporation, under which the turnpikes upon certain portions of turnpike roads were

removed, and the repair of such portions was undertaken by the corporation. *West Riding JJ.* v. *Reg.*, 8 App. Cas. 781 ; 53 L. J. M. C. 41 ; 49 L. T. (N.S.) 786; 32 W. R. 253 ; 48 J. P. 228. **Sect. 11 (1).** NOTE.

The corporation of the borough of Rochdale was the highway authority of the Rochdale highway area. Under ss. 47—50 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), the obligation to repair all public highways within the area of the "town" was imposed upon the corporation, and the turnpike trustees were forbidden to collect any toll or lay out any money on any road within that area. By a local Act of 1872 the boundaries of the borough were enlarged, and all the provisions of the Acts relating to the "town" were made applicable to the enlarged area of the borough. The effect was that further portions of turnpike roads were for the first time brought within the area of the borough, and within the operations of the Towns Improvement Clauses Act, 1847 :—*Held*, reversing the decision of the Court of Appeal, that these further portions, being only parts of turnpike roads, had not "ceased to be turnpike roads," and were not to be deemed to be "main roads" within s. 13 of the Highways and Locomotives (Amendment) Act, 1878, and that the county authority were not liable to pay half the expenses of their maintenance. *Lancashire JJ.* v. *Rochdale* (*Mayor of*), 8 App. Cas. 494 ; 53 L. J. M. C. 5 ; 49 L. T. (N.S.) 368 ; 32 W. R. 65 ; 48 J. P. 20.

In 1855 a portion of a turnpike road was included in an improvement district under a local Act incorporating the Towns Improvement Clauses Act, 1847. Thereupon, by virtue of ss. 47—51 of the latter Act, the maintenance of this portion of the road became vested in the Improvement Commissioners, and the turnpike trustees ceased to have power to collect toll or lay out money upon it. In 1877 the turnpike trust expired. The Commissioners were the highway authority for the district, and the district was a highway area within the meaning of s. 13 of the Highways and Locomotives (Amendment) Act, 1878. It was held that notwithstanding the operation of ss. 47—51 of the Towns Improvement Clauses Act, 1847, the road only ceased to be a turnpike road and became a main road within s. 13 upon the expiration of the turnpike trust ; and that as that event happened after 1870, the county authority was liable to pay to the Commissioners one half the expenses incurred by them in the maintenance of the portion of the road within their district. *Lancashire JJ.* v. *Newton-in-Makerfield Improvement Commissioners*, 11 App. Cas. 416 ; 55 L. T. (N.S.) 615 ; 35 W. R. 185 ; 56 L. J. M. C. 17 ; 51 J. P. 68.

By a local Act passed in 1874 the limits of the borough of M. were extended. By s. 20 of that Act it was enacted that the extended area "shall be exempt from all county rates save only in respect of the purposes for which any county rates are now leviable within the existing borough." At the time of the passing of that Act general county rates were leviable within the existing borough for all purposes for which such rates could be levied in any part of the riding. It was held that the saving of such liability rendered the exemption in s. 20 inoperative ; and therefore the inhabitants of the extended area of the borough were not exempt from liability to pay county rates for the maintenance of main roads under s. 13 of the Highways, etc. Act, 1878. *Middlesborough Overseers* v. *North Riding JJ.*, 12 Q. B. D. 239 ; 32 W. R. 671.

The word "situate" in s. 13 means geographically situate. *Over Darwen* (*Mayor of*) v. *Lancashire JJ.*, 15 Q. B. D. 20 ; 54 L. J. Q. B. 51 ; 52 L. T. (N.S.) 739 ; 48 J. P. 437.

Inasmuch as by ss. 35 (4) and 38 (3) of the Local Government Act, 1888, *post*, quarter sessions boroughs are urban sanitary districts within the meaning of s. 14 of the Highways, etc. Act, 1878, a question such as arose in *Kent JJ.* v.

Sect. 11 (1). NOTE. *Sandgate Local Board*, 7 T. L. R. 571, can hardly occur again ; it was there held that where the quarter sessions had for many years paid half the expenses of maintaining a road under the belief that it was a main road for which they were liable, and it was afterwards discovered that they were not liable by reason of the road being within a borough, an action would not lie in the name of the justices to recover the sum so paid to the highway authority.

And as rural district councils have now (under s. 25 of the Local Government Act, 1894, *post*), in almost all cases superseded all other highway authorities in their district, questions are not likely to arise as to what is a highway area or a highway authority within the meaning of s. 14 and other sections of the Highways, etc., Act, 1878, in a rural district, such as the question which arose in *R.* v. *Norfolk County Council*, 60 L. J. Q. B. 379 ; 65 L. T. (N.S.) 222 ; 56 J. P. 7. With that case can now be compared *Isle of Wight Highway Commissioners* v. *Isle of Wight County Council*, 72 L. T. (N.S.) 569 ; 59 J. P. 438 ; *Marshland Smeeth and Fen District Commissioners* v. *Marshland Rural District Council*, 73 L. T. (N.S.) 563 ; 59 J. P. 824.

A road which had ceased to be a turnpike road within the period between December 31st, 1870, and August 16th, 1878 (the date of the passing of the Highways, etc. Act, 1878), and had become a main road, there being no application for a provisional order before February 1st, 1879 (the now repealed part of s. 16 of the Act, of 1878), is not excluded from the operation of the provisions of s. 16 above set out, and the Local Government Board has, therefore, jurisdiction to make a provisional order declaring such road an ordinary highway upon an application made subsequently to February 1st, 1879. *R.* v. *Local Government Board*, 15 Q. B. D. 70 ; 54 L. J. M. C. 104 ; 54 L. T. (N.S.) 194 ; 49 J. P. 580.

The changes effected by the text are very important. A main road is not, except in the case provided for by the succeeding sub-sections, repairable by the highway authority at all. The duty of repairing it belongs to the county council, who, for all purposes of repairing, etc., have the powers of a highway board.

Maintenance, Repair, Improvement, etc.—They may not merely maintain the road, but they may improve and enlarge it. The questions often raised as to the meaning of maintenance are to a great extent avoided by the language of the text. See *Amesbury Guardians* v. *Wiltshire JJ.*, 10 Q. B. D. 480 ; 52 L. J. M. C. 64 ; 31 W. R. 521 ; 47 J. P. 184 ; *Leek Improvement Commissioners* v. *Staffordshire JJ.*, 20 Q. B. D. 794 : *R.* v. *Essex JJ.*, 4 T. L. R. 676 ; *Burnley (Mayor, etc., of)* v. *Lancaster County Council*, 54 J. P. 279 ; *Lancashire Road Trustees* v. *Fleaning*, W. N. 1886, p. 180 ; 14 Ct. of Sess. Cas. (H. L.) 18 ; *Warminster Local Board* v. *Wiltshire County Council*, 25 Q. B. D. 450 ; 59 L. J. Q. B. 434 ; 62 L. T. (N.S.) 902 ; 38 W. R. 670 ; 54 J. P. 375 ; *London (Mayor, etc., of)* v. *Barnes*, 12 T. L. R. 135. The improvements which a highway board may make in a highway are enumerated in 27 & 28 Vict. c. 101, ss. 47, 48. They include the conversion of any main that has not been stoned into a stoned road, the widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges, and the doing of any work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair.

For the purpose of repairing main roads the county council have the same right under this section of taking gravel for repairs from a pit as a surveyor of highways. *Norfolk County Council* v. *Bittering Highway Surveyor*, 58 J. P. 497.

As to repairs where a main road is broken up for sewerage or otherwise, see sub-s. (12), *post*.

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NOTE.

As to the liability of the county council to repair footpaths by the side of main roads, paved or pitched crossings, etc., see *Warminster Local Board* v. *Wiltshire County Council*, and other cases, the effect of which is stated in the notes to the next sub-section.

It was held in *R.* v. *Poole* (*Mayor, etc. of*), 19 Q. B. D. 602; 56 L. J. M. C. 131; 57 L. T. (N.S.) 485; 36 W. R. 239; 52 J. P. 84, that an urban sanitary authority is not liable to be indicted at common law for non-repair of a highway. But they may be indicted under s. 10 of the Highways, etc. Act, 1878. *R.* v. *Wakefield* (*Mayor, etc. of*), 20 Q. B. D. 810; 57 L. J. M. C. 52; 36 W. R. 911; 52 J. P. 422.

Bridges.—The county council have now all the powers formerly exercised by justices in quarter sessions as to the repair of county bridges. See s. 3 (viii.) of this Act. If the county council make any alteration in the road such as to cause a nuisance, they will be liable in damages to any person injured thereby. See *Shill* v. *Gloucestershire County Council*, "Times," October 30th, 1893; 15 M. C. C. 454. But where a road forming part of the approach to a county bridge had subsided and the county council proposed to raise it to its original height, it was held that they could not be restrained from so doing at the instance of a frontager who alleged injury to his property. *Atherton* v. *Cheshire County Council*, 60 J. P. 6. As to the liability of a canal company under the Canal Act to repair the approaches to bridges carrying main roads over a canal, see *Nottingham County Council* v. *Manchester, Sheffield, and Lincolnshire Railway Co.*, 71 L. T. (N.S.) 430.

Where a bridge at B. was partly within Staffordshire and partly within Derbyshire, and by a local Act the expenses of repairing it were to be borne equally out of the two county rates, and by virtue of s. 50 (1) (*b*), *post*, the whole of the bridges became included in the county of Stafford, it was held that the local Act remained in force and that both counties were still liable to pay equally for repairs. *In re Staffordshire and Derbyshire County Councils*, 54 J. P. 566.

Obstructions.—County councils have the powers of highway boards for preventing and removing obstructions. It has been held that the costs of prosecuting by indictment for obstructing a highway are properly chargeable as part of the cost of maintaining a highway. *R.* v. *Heath*, 29 J. P. 452. JESSEL, M.R., expressed an opinion that the Crown or the conservators of a road had by their agents a right to remove an obstruction, though a private person had no such right if he could pass without doing so, and that in any case a body or person who represented the public would have such a right after judicial determination that there was an obstruction. *Bagshaw* v. *Buxton Local Board*, 1 Ch. D. 224; 45 L. J. Ch. 260; 34 L. T. (N.S.) 112; 24 W. R. 231; 40 J. P. 197.

But in *Reynolds* v. *Presteign Urban District Council*, [1896] 1 Q. B. 604; 65 L. J. Q. B. 400; 74 L. T. (N.S.) 422; 44 W. R. 479; 12 T. L. R. 327, it was held by Lord RUSSELL OF KILLOWEN, C.J., and WRIGHT, J., that an urban district council has power to remove encroachments on highways within their district without first taking proceedings against the person alleged to have encroached. The ground of this decision was that the highway was a street vested in the district council under s. 149 of the Public Health Act, 1875: the decision will therefore, it seems, apply in favour of county councils in whom main roads are vested by sub-s. (6) of this section, *infra*; and in *Harris* v. *Northamptonshire County Council*, 61 J. P. 599, it was held by BYRNE, J., that a county council had this power as a highway authority apart from any vesting in them of the soil of the main road. See also *Louth District Council* v. *West*, 65 L. J. Q. B. 535; 12 T. L. R. 477, in which it was held by CAVE and WILLS, JJ., that a rural district council in exercising the

Sect. 11 (1). duties imposed upon it by s. 26 of the Local Government Act, 1894, *post*, is entitled to remove an obstruction, and may recover the expenses incurred in so doing in an action against the obstructor. See further as to the position of highway authorities as to the removal of obstructions, *Murray* v. *Epsom Local Board*, [1897] 1 Ch. 35 ; 66 L. J. Ch. 107 ; 75 L. T. (N.S.) 579 ; 45 W. R. 185 ; 61 J. P. 71.

NOTE.

Roadside wastes.—The highway is presumably the entire space between the fences which has been dedicated to the public and is capable of being used for passage. *R.* v. *United Kingdom Telegraph Co.*, 3 F. & F. 73 ; 9 Cox C. C. 114, 174 ; 31 L. J. M. C. 166 ; 2 B. & S. 647 ; 6 L. T. (N.S.) 378 ; *Turner* v. *Ringwood Highway Board*, L. R. 9 Eq. 418 ; *Nicol* v. *Beaumont*, 63 L. J. Ch. 853 ; 50 L. T. (N.S.) 112 ; *Harris* v. *Northamptonshire County Council*, 61 J. P. 699 ; *Locke-King* v. *Woking Urban District Council*, *Times*, November 12th, 1897. But the highway does not include an open and uninclosed ditch by the side of it : *Field* v. *Thorne*, 20 L. T. (N.S.) 563 ; 33 J. P. 727 ; nor any part of the uninclosed land adjoining a highway which had never been dedicated as part of the highway though within fifteen feet from the centre of the road : *Easton* v. *Richmond Highway Board*, L. R. 7 Q. B. 69 ; 41 L. J. M. C. 25 ; 25 L. T. (N.S.) 586 ; 36 J. P. 485. And see *Robinson* v. *Cowpen Local Board*, 63 L. J. Q. B. 235 ; 9 R. 858.

The rights of a county council in respect of roadside wastes over which it was admitted that the public had a right of passage were considered in *Curtis* v. *Kesteven County Council*, 45 Ch. D. 504 ; 60 L. J. Ch. 103 ; 63 L. T. (N.S.) 543 ; 39 W. R. 199. In that case the facts were as follows :—A main road was 3,746 yards long ; the metalled part of the road was of a uniform width of 22 feet ; the total width of the road between hedge and hedge varied from 65 to 95 feet. The unmetalled portion of the road was covered with grass, timber, and other growths. C., the plaintiff, was tenant for life of the whole of the inclosed land on each side of the road. The uninclosed strips of waste land at the sides of the road were let annually by the plaintiff, C., to cottagers, two of whom were also plaintiffs. The defendants, the county council, contended that the strips were vested in them by the provisions of sub-s. (6), *infra*, and they let the herbage to L., a co-defendant. The plaintiff claimed a declaration that C. was seised of the strips, and entitled to the herbage, trees, and other growths thereon, and for an injunction restraining the defendants from cutting or removing the grass, trees, or other growths. It was held by NORTH, J., that the strips in question were "road-side wastes" within the meaning of sub-s. (1), but were not vested in the county council by sub-s. (6) of this section, and he gave the judgment claimed "without prejudice to the rights of the county council under the Local Government Act." The view taken by the learned judge was that "what the county council have given to them is a power of asserting the right of the public to the use and enjoyment of these roadside wastes" ; and that seemed to him inconsistent with the idea that the waste was the property of the county council itself.

It does not appear that a highway board has any express power to assert the right of the public to the use and enjoyment of roadside wastes. But it is now the duty of every district council to prevent any unlawful encroachment on any roadside waste within their district (see the Local Government Act, 1894, s. 26 (1), *post*) ; and if the district council fail upon a representation being made to them by a parish council to take proper proceedings for preventing the encroachment, the county council may, upon the petition of the parish council, resolve to take over the powers and duties of the defaulting district council in that respect (*ib.* sub-s. (4)) ; but nothing in s. 26 of the Act of 1894 is

to affect the powers of a county council in relation to roadside wastes (*ib.* sub-s. (6)).

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NOTE.

For the definition of the phrase "general county purpose," see s. 68, *post*, and as to the effect of the concluding words of sub-s. (1), where main roads were partially repairable out of rates levied in the hundreds into which a county was divided, see *R.* v. *Dolby*, cited in the note to sub-s. (13), *post*.

It should be mentioned that, by s. 35, *post*, the provisions of this section are to apply to the larger quarter sessions boroughs, and these boroughs are, for the purposes of main roads, to be deemed part of the county. As to main roads in the smaller boroughs, see s. 38, *post*.

(2.) Provided that any urban authority may, within twelve months after the appointed day, or in case of a road in the district of such authority becoming a main road at any subsequent date then within twelve months after that date, claim to retain the powers and duties of maintaining and repairing a main road within the district of such authority, and thereupon they shall be entitled to retain the same, and for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, shall have the same powers and be subject to the same duties as if such road were an ordinary road vested in them, and the council shall make to such authority an annual payment towards the costs of the maintenance and repair, and reasonable improvement connected with the maintenance and repair of such road.

For the definition of the phrase "appointed day," see s. 109, *post*.

An urban authority is the council of a borough, or the district council of an urban district (Local Government Act, 1894, s. 21, *post*).

Under the Highway Act, 1878, a borough having a separate court of quarter sessions was not a highway area for the purposes of the Act, and consequently the provisions of that Act as to main roads did not apply. By ss. 35, 38, of this Act, *post*, such boroughs are to be deemed urban sanitary districts, and therefore highway areas.

If an urban authority claim to retain their right of repair, the county council will be free from liability to repair, etc.

It seems clear that a newly created urban authority cannot claim under this sub-section to take over a road within their district which has been a main road for twelve months prior to the creation of their district; nor could such a claim be made where an existing district was extended so as to include such a road. It may even be doubted whether this sub-section can be acted upon by any urban authority which was not in existence when this Act came into operation.

Considerable doubt was for some time felt as to whether upon the construction of this sub-section a county council is liable to make a payment to an urban authority which have retained the duty of maintaining and repairing a main road, for the costs of the maintenance and repair of the paved footways at the sides of the road and of the paved or pitched crossings over the main roads. This question has now been set at rest by a series of decisions in which it has been held that the county council is so liable. *In re Warminster Local Board and Wilts County Council* (GRANTHAM and CHARLES, *JJ.*) 25 Q. B. D. 450; 59 L. J. Q. B. 434; 62 L. T. (N.S.) 902;

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NOTE.

38 W. R. 671; 54 J. P. 375. *In re Burslem (Mayor, etc. of)* v. *Staffordshire County Council* (Court of Appeal), [1896] 1 Q. B. 24; 65 L. J. Q. B. 1; 73 L. T. (N.S.) 651; 59 J. P. 772; *Derby County Council* v. *Matlock Bath and Scarthin Nick Urban District Council* (House of Lords), [1896] A. C. 315. The order in the *Warminster Case* (the decision in which case was approved by the House of Lords in the *Matlock Case*) was settled by CHARLES, J., in Chambers, and is to the following effect: (1.) The county council is liable to make an annual payment towards the cost of the maintenance and repair and reasonable improvement connected with the maintenance and repair of all footpaths by the sides of main roads whether these are gravelled, paved, asphalted, etc., and whether such footpaths are or are not footpaths which the turnpike trustees were exempted from repairing under 3 Geo. 4, c. 126, s. 112. (2.) The county council are under the like liability as to paved or pitched crossings over main roads. (3.) The county council are liable to contribute an annual sum towards the cost of scavenging, cleansing, and watering main roads, in so far as such scavenging and cleansing are necessary for maintenance and repair as distinguished from purposes of public health. (4.) The county council are under no liability with respect to the lighting of main roads (see sub-s. (11), *post*). (5.) If the local authority alter the paving or flagging of the footways, as, for instance, by substituting flagging, pavement, wood, or asphalte for gravel or other substance, the county council are bound to make an annual payment in respect of such alteration, in so far as it is a reasonable improvement connected with maintenance and repair, the question whether it is reasonable in any particular case being, in case of dispute, settled by arbitration under sub-s. (3). (6.) The county council are not liable to make any payment in respect of the principal or interest of any money borrowed before the passing of this Act; but the court expressed no opinion as to moneys borrowed after that date. See further on this subject *In re Wiltshire County Council and Mayor, etc., of Marlborough*, 58 J. P. 213. In that case the court held that although the whole burden might be cast upon the county council, that council were only bound to discharge their liability in the same way as the urban authority, so that if money was borrowed or capital expenditure incurred by the urban authority, the county council were only bound to pay the instalments or were entitled to spread the expenditure over a number of years. And it was further held that this sub-section did not forbid the recovery from the county council of expenses defrayed out of borrowed money.

It has been contended that notwithstanding the use of the word "towards" in this sub-section, a county council is liable to pay the entire cost properly incurred of the maintenance, repair, and reasonable improvement of a main road retained by an urban authority; that in fact, their liability is no less than it would have been if the road had not been retained, but was maintainable and repairable by the county council under sub-s. (1). The *Marlborough Case* above cited gives some support to this view; but in *In re Bedfordshire County Council and Bedford Urban Sanitary Authority*, [1894] 2 Q. B. 786; 64 L. J. Q. B. 26; 71 L. T. (N.S.) 433; 58 J. P. 786, MATTHEW, J., said: "The legislature plainly contemplated the case ordinarily arising in which it would not be fair that the whole amount incurred in respect of repair and maintenance should be paid by the county council, although it would certainly be just that some part should be cast upon the county council. The Act does not, however, exclude cases where the whole amount of costs incurred might be paid by the county council." See also on this point *Middlesex County Council* v. *Willesden District Council*, cited *infra*.

As to the liability of a county council in respect of the cost of re-building a

sea-wall and esplanade supporting a main road, see *Sandgate Local Board* v. *Kent County Council*, 13 T. L. R. 333 ; 61 J. P. 517. **Sect. 11 (2).**

NOTE.

The words "maintenance, repair, and reasonable improvement" meet the decision in *Leek Improvement Commissioners* v. *Staffordshire JJ.*, cited in the notes to the last sub-section.

As to how the amount of the annual payment is to be determined, see the next sub-section.

Where trust funds arising under various settlements were applicable for the maintenance, repair, lighting, watching, and watering of certain main roads to which this sub-section applied, the court (without dealing with any question of amount) declared that in settling the payment to be made by the county council to the urban authorities who claimed to retain the roads the existence of the trust funds ought not to be excluded from consideration, but that as the funds ought according to the trusts to be applied not only to maintenance and repair but also to lighting, watching, and watering, the amount usually required to be expended out of the trust funds on these last-mentioned purposes should not be treated as money to be brought into account in assessing the payment to be made by the county council towards maintenance, repair, and improvement. *Middlesex County Council* v. *Willesden District Council*, 60 J. P. 630 ; 12 T. L. R. 437.

(3.) The amount of such payment shall be such annual sum as may be from time to time agreed on, or in the absence of agreement may *be determined by arbitration of the Local Government Board.*

This sub-section is to have effect as if for the words printed in italics were substituted the words "be determined by the Local Government Board either as arbitrators or otherwise at the option of the Board" (Local Government (Determination of Differences) Act, 1896 (59 Vict. c. 9), s. 1, *post*). And s. 2 of the same Act provides that an order of the Board made before the passing of that Act (May 21st, 1896) and purporting to have been made for the determination of any matter under s. 11 of the Local Government Act, 1888, shall not be invalid by reason only of the Board having determined the matter as arbitrators or otherwise instead of appointing an arbitrator to determine it.

This Act seems to have been passed to meet the decision in *In re Kent County Council and Sandgate Local Board*, [1895] 2 Q. B. 43 ; 64 L. J. Q. B. 502 ; 72 L. T. (N.S.) 725 ; 43 W. R. 652 ; 59 J. P. 456 ; 11 T. L. R. 421, in which it was decided that where under this Act the Local Government Board are to determine differences "by arbitration" (as in the unaltered text) they must proceed under s. 63, *post*, with the consequence that an arbitrator appointed by them under that section may be compelled under s. 24 of the Arbitration Act, 1889 (52 & 53 Vict. c. 49) to state a case for the opinion of the court. In that case the Board in determining a difference under this sub-section had proceeded under s. 87, *post*, by holding a local inquiry, and the court held that this method of procedure was inapplicable. The effect of the Act of 1896 is that when the Board are called upon to determine a difference under this section they may at their option proceed under s. 63 (in which case the arbitrator appointed by them must state a case if called upon to do so) or under s. 87 (in which case the Board do not act as arbitrators and cannot be compelled to state a case).

The High Court has no jurisdiction to determine a question of amount under this sub-section. *In re Bedfordshire County Council and Bedford Urban*

Sect. 11 (3). *Sanitary Authority*, [1894] 2 Q. B. 786 ; 64 L. J. Q. B. 26 ; 71 L. T. (N.S.) 433 ; 58 J. P. 786.

NOTE.

(4.) The county council and any district council may from time to time contract for the undertaking by the district council of the maintenance, repair, improvement, and enlargement of, and other dealing with any main road, and, if the county council so require, the district council shall undertake the same, and such undertaking shall be in consideration of such annual payment by the county council for the costs of the undertaking as may from time to time be agreed upon, or, in case of difference, *be determined by arbitration of the Local Government Board ;* and for the purposes of such undertaking the district council shall have the same powers and be subject to the same duties and liabilities as if the road were an ordinary road vested in them.

In this sub-section for the words printed in italics are to be substituted the words "be determined by the Local Government Board either as arbitrators or otherwise at the option of the Board" (Local Government (Determination of Differences), Act, 1896, *post.*) For the effect of this substitution, see the note to the last sub-section.

As to the meaning of the term "district council," see s. 100, *post*, and Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 21, 25.

The provisions of this sub-section apply to all main roads save those which an urban authority have elected to maintain under sub-s. (2), *ante.* The county council and district council may contract, but in the absence of contract the county council may require the district council to undertake the repair of all or any main roads in their district.

The contract may apparently be for a term of years or for any less period. An agreement under this sub-section between a county council and a highway authority does not take away from the former their rights and liabilities as the road authority under the Tramways Act, 1870. *Stockport and Hyde Highway Board* v. *Cheshire County Council*, 61 L. J. Q. B. 22 ; 65 L. T. (N.S.) 85 ; 39 W. R. 696 ; 55 J. P. 808.

The Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), *post*, contains further provisions enabling county councils and highway authorities to make agreements for the improvement, etc., of main roads, highways, and bridges.

The highway authority have no option if required by virtue of the provision in the text to undertake the maintenance, etc., of main roads. They must in that case provide the necessary cost out of the funds in their hands for the repair of the highways in their district, and the payments made to them by the county council will be paid into the same fund.

On the concluding words of this sub-section it may be observed that ordinary roads are not vested in a district council, unless such council is an urban authority, in which case the highways repairable by the inhabitants at large are vested in the authority by virtue of s. 149 of the Public Health Act, 1875. The words "vested in them" must not, therefore, be read literally, but *as equivalent to* "subject to their control," or some similar expression.

(5.) Provided that in no case shall a county council make any payment to a district council towards the costs of such undertaking

as respects any road, or towards the costs of the maintenance, repair, or improvement of any road by an urban authority, until the county council are satisfied by the report of their surveyor, or such other person as the county council may appoint for the purpose, that the road has been properly maintained and repaired, or that the improvement or enlargement of or other dealing with the road, as the case may be, has been properly executed. Sect. 11 (5).

This sub-section has reference both to an undertaking under sub-s. (4), and to maintenance by an urban authority under sub-s. (2). As to the procedure in case of refusal to make a payment under this section, see sub-s. (9), *infra*.

(6.) A main road and the materials thereof, and all drains belonging thereto, shall, except where the urban authority retain the powers and duties of maintaining and repairing such road, vest in the county council, and where any sewer or other drain is used for any purpose in connexion with the drainage of any main road, the county council shall continue to have the right of using such sewer or drain for such purpose, and if any difference arises between a county council and any highway or sanitary authority as respects the authority in whom the drain is vested, or as to the use of any sewer or other drain, the council or the highway or sanitary authority may require such difference to be referred to arbitration, and the same shall be referred to arbitration in manner provided by this Act.

The main road, the materials thereof, and the drains belonging thereto, are to *vest* in the county council, except where the urban authority retain the right of repairing under sub-s. (2). When the urban authority does not retain this right, the road which had hitherto been vested in the urban authority by s. 149 of the Public Health Act, 1875, will cease to be vested in them, and will *vest* in the county council. The meaning of the word *vest* will appear from the following decisions on the Public Health Act, 1875, s. 149 :—

In *Hinde* v. *Chorlton*, L. R. 2 C. P., at p. 116, WILLES, J., referring to the words *vest in* as used in a local Act, said, "There is a whole series of authorities in which words which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out of the objects of the Act without giving them the freehold. In *Stracey* v. *Nelson*, 12 M. & W. 535 ; 13 L. J. Ex. 97, it was provided by an Act that certain lands should be *vested* in the Commissioners of Sewers, and the court held, notwithstanding, that only the control over the land, and not the freehold, passed to them." In *Bagshaw* v. *Buxton Local Board* (*ante*, p. 25), 1 Ch. D., at p. 222, JESSEL, M.R., said that by the term *vested* he meant vested *sub modo*, as far as a highway can be, not necessarily giving to the local authority the right to the soil. The words *vest in* do not give the property in the street, but merely the property in the surface of the street, and in such part of the soil as is or can be used for the ordinary purposes of a street. *Coverdale* v. *Charlton*, 4 Q. B. D. 104 ; 48 L. J. Q. B. 128 ; 40 L. T. (N.S.) 88 ; 26 W. R. 687 ; 43 J. P. 268. In that case, by an award

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NOTE.

made under an Inclosure Act passed in 1766, two private roads, E. and H., were set out. About 1818 the road E. became a public highway. Down to 1863 the surveyors of highways for the parish of C., within which E. and H. were situate, had from time to time let the pasturage upon E. and H. to various persons. A local board was formed in 1863 for the parish of C., who in 1876 let the pasturage on E. and H. to the plaintiff. He thereupon commenced to depasture the herbage with his cattle on the roads. The defendant interfered with the plaintiff's enjoyment of the pasturage. It was held that the property in the soil of E., being a street, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff, who was entitled to maintain an action. It was held also that the local board having no power to demise H., being a private way, the plaintiff had not sufficient exclusive possession as occupier to enable him to maintain an action. In a subsequent case, JAMES, L.J., explained this decision as to the meaning of the words *vest in* as follows :—"What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on and in respect of the soil, which would enable them as owners to bring a possessory action against trespassers. Now what was that something more? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold, in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited extent in space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind, passed, but that the board had only the surface, and with the surface such right below the surface as was essential to the maintenance and occupation and exclusive possession of the street, and the making and maintaining of the street for the use of the public." *Rolls* v. *St. George the Martyr, Southwark* (*Vestry of*), 14 Ch. D. 785 ; 49 L. J. Ch. 691 ; 43 L. T. (N.S.) 140 ; 28 W. R. 867 ; 44 J. P. 680. In that case the plaintiff having, with the sanction of the Metropolitan Board of Works, made a new street over his land, upon which land were two old streets, N. and A., an order was made at quarter sessions for stopping up part of N. street as unnecessary, and an order was also made for diverting a part of A. street, and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped-up part of N. nor stop up A., or convert any part of the soil of it to his own use until he had purchased the same from the vestry. It was held by the Court of Appeal, reversing the decision of the Master of the Rolls, that under 18 & 19 Vict. c. 120, s. 96, all streets being for the time being highways, are vested in the vestry, but only so long as they are highways, and that when they cease to be highways by being legally stopped up or diverted, the interest of the vestry determines. And it was therefore held that the plaintiff was entitled to convert to his own use the stopped-up part of N. and the diverted part of A., subject, as to A., to his first obtaining a certificate under 5 & 6 Vict. c. 50, s. 91, that the substituted street had been completed and put into good condition and repair. Where a street was carried across a railway situate in a deep cutting, the bridge being erected pursuant to the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20, ss. 46—51), it was held that the vesting of the street in the vestry under 18 & 19 Vict. c. 120, s. 105, did not give the vestry any property in the bridges or its fences, but merely vested in them the carriageway and foothpaths and the materials of which these were made. *Great Eastern Rail. Co.* v. *Hackney Board of Works*, 8 App. Cas. 687 ; 52 L. J. M. C. 105 ; 49 L. T. (N.S.) 509 ; 48 J. P. 52. The

vesting of the streets in the urban authority does not confer upon them such a property in the streets as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, the telephone wire being erected at a great height, and causing no appreciable danger to the public or to the traffic in the street. *Wandsworth District Board of Works* v. *United Telephone Co.*, 13 Q. B. D. 904 ; 53 L. J. Q. B. 449 ; 51 L. T. (N.S.) 148 ; 32 W. R. 776 ; 48 J. P. 676. The earlier cases were discussed and explained by the House of Lords in *Tunbridge Wells (Mayor, etc., of)* v. *Baird*, [1896] A. C. 434 ; 65 L. J. Q. B. 451 ; 74 L. T. (N.S.) 385 ; 60 J. P. 788. There it was held that the vesting of the street vests in the urban authority such property and such property only as is necessary for the control, protection, and maintenance of the street as a highway for public use. It has since been held that a local authority in whom a street is vested under s. 149 of the Public Health Act, 1875, have no greater right of property in the materials, etc., of such street than they have in the street itself. See *Salt Union* v. *Harvey*, 61 J. P. 212 ; 13 T. L. R. 297. **Sect. 11 (6). NOTE.**

The right of the public to use a highway *primâ facie* extends not only to the *via trita*, but includes the entire space between the fences dedicated to the use of the public, and capable of being used by them. See on this subject *R.* v. *United Kingdom Telegraph Co.*, and other cases cited *ante*, p. 26. But NORTH, J., has held that the waste land at the side of the metalled portion of a main road was not vested in the county council by the text. *Curtis* v. *Kesteven County Council*, 45 Ch. D. 504; 60 L. J. Ch. 103; 63 L. T. (N.S.) 543 ; 39 W. R. 199, *ante*, p. 26.

As to the effect of the vesting of a road in a highway authority in relation to their right to remove obstructions, see *Reynolds* v. *Presteign Urban District Council*, and *Harris* v. *Northampton County Council*, referred to *ante*, p. 25.

Ordinary highway drains will vest with the main road in the county council. But where the drainage of the road flows into a drain or sewer belonging to a sanitary authority the right of user is to continue.

The mode of arbitration referred to in this sub-section is that prescribed by s. 62, sub-ss. (2), (3), *post*.

(7.) Where a county council declare a road to be a main road, such declaration shall not take effect until the road has been placed in proper repair and condition to the satisfaction of the county council.

This provision is in effect an amendment or proviso to the Highway Act, 1878, s. 15, which has been quoted in the note to sub-s. (1), *ante*. As to the method of determining any dispute arising as to the condition of the road, see sub-s. (9), *infra*.

(8.) If at any time the county council are satisfied, on the report of their surveyor or other person appointed by them for the purpose, that any portion of a main road, the maintenance and repair of which are undertaken by any district council, is not in proper repair and condition, the county council may cause notice to be given to such district council, requiring them to place the road in proper repair and condition ; and, if such notice is not complied with within a reasonable time, the county council may do everything that seems to them necessary to place the road in proper

Sect. 11 (8). repair and condition, and the expenses of so doing shall be a debt of the said district council to the county council.

This provision applies only to main roads of which the repair has been undertaken under sub-s. (4). It does not apply to main roads repaired by an urban authority under sub-s. (2). As to the method of determining cases of dispute under this sub-section, see sub-s. (9), *infra*.

The expenses incurred being hereby made a debt, will be recoverable by action in the High Court, or in the county court if less than 50*l*.

(9.) If any difference arises under this section between a county council and a district council as to the refusal of the county council to make a payment under this section to the district council in respect of any undertaking or road, or as to a road having been placed in proper repair and condition previously to its becoming a main road, or as to any notice given to the district council by the county council to place a road in proper repair and condition, such difference shall, if either council so require, *be referred to the arbitration of the Local Government Board.*

In this sub-section for the words printed in italics are to be substituted the words "be determined by the Local Government Board, either as arbitrators or otherwise, at the option of the Board" (Local Government (Determination of Differences) Act, 1896, *post*). For the effect of this sub-section, see the note to sub-s. (3), *ante*.

The differences here referred to are such as may arise under sub-ss. (5), (7), and (8).

(10.) The county council may, if they think fit, contribute towards the cost of the maintenance, repair, enlargement, and improvement of any highway or public footpath in the county, although the same is not a main road.

For the meaning of the term "improvement," see the note to sub-s. (1).

A contribution towards the cost of a highway under this sub-section may be made subject to any such conditions for the proper maintenance and repair of such highways (*sic*) as may be agreed on between the county council and the highway authority: Local Government Act, 1894, s. 25 (3), *post*.

See further as to agreements between county councils and highway authorities in relation to the construction, improvement, etc., of highways, s. 3 of the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), *post*.

The text uses the words "highway or public footpath," but a public footpath is to all intents and purposes a highway, and is repairable like any other highway. See *per* Lord ELLENBOROUGH in *R.* v. *Salop*, 13 East, at p. 97.

(11.) Every authority having any power or duty to light the roads in their district shall have the same power and duty to light any main road in their district.

The county council are not liable to light the main roads in any case. In urban districts the power and duty devolves on the urban authority under

ss. 161, 162, of the Public Health Act, 1875. They may under these sections contract for the supply of gas or other means of lighting the streets, and if there is no company having statutory powers in their district they may themselves provide a supply of gas for public or private purposes. In the latter case they may obtain a provisional order under the Gas and Waterworks Facilities Acts. They may also purchase the undertaking of any gas company in their district. Sect. 11 (11). NOTE.

In rural districts urban lighting powers may be obtained by order of the Local Government Board under s. 276 of the Public Health Act, 1875. In rural parishes powers of lighting may be obtained under the Lighting and Watching Act (3 & 4 Will. 4, c. 90), and the Local Government Act, 1894, s. 7, the lighting authority being the parish council, or where there is no parish council, inspectors appointed by the parish meeting.

An urban or rural sanitary authority may obtain a licence or provisional order for the supply of electricity for public or private purposes. See the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56).

(12.) Anything authorized or required by law to be done by or to a highway or road authority shall, as respects a main road maintained by a county council, be authorized or required to be done by or to that council; and every authority having any power to break up any road in their district for the purpose of sewerage or otherwise shall have the like power of breaking up any main road in their district, but if the road is broken up the authority shall repair it to the satisfaction of the county council maintaining such road, and if it is not repaired to the satisfaction of the county council, that council may cause the necessary repairs to be done and may charge the costs against the authority, and the same shall be a debt due from the authority to the council.

This provision apparently confers upon a county council, with respect to main roads, all the powers and liabilities of a highway surveyor or a highway board.

A sanitary authority may lay sewers and water mains in any road, and may break up roads for that purpose (Public Health Act, 1875, ss. 16, 54).

Among other authorities who may break up roads may be mentioned water companies under the Waterworks Clauses Act, 1847, ss. 28—34; gas companies under the Gasworks Clauses Act, 1847, ss. 6—12; tramway companies under the Tramways Act, 1870, ss. 26, 27, 30; electric lighting companies under the Electric Lighting Act, 1882, ss. 12, 13.

The provisions of the text as to the reinstating of the road are in addition to those contained in the above Acts.

(13.) Section twenty of the Highways and Locomotives (Amendment) Act, 1878, shall apply as if it were herein re-enacted and in terms made applicable to this section. 41 & 42 Vict. c. 77.

The 41 & 42 Vict. c. 77, s. 20, is as follows:—

"Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county

Sect. 11 (13). Note.

in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their county to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged."

The following is an extract from a letter dated September 18th, 1878, from the Local Government Board with reference to this section:—

"The wording of this section, which was introduced at a very late stage of the Bill, and is limited in its application to the county of Lancaster chiefly, is somewhat obscure; and it may be assumed that the effect of declaring a main road repairable by the hundred is simply intended to be that the hundred rate shall be substituted for the county rate as the fund from which a moiety of the cost is to be repaid to the highway authorities. The justices will not fail to observe that where the alternative given by the section is adopted, it is desirable that all the main roads in the county should be declared to be repairable by the several hundreds through which they pass, otherwise the ratepayers of those hundreds will not only have to contribute towards the roads within their own hundreds, but also towards any roads within the county in respect of which a contribution is payable from the county rate."

The provisions of the above section remain in force where it is applicable. The hundred rate is made and levied by the county council under s. 3 (1), *ante*.

The county authority of a county (Lancaster), the whole of which was divided into hundreds, made an order under s. 20 of the Highways and Locomotives (Amendment) Act, 1878, declaring every main road in each hundred to be repairable by that hundred, and one-half the expense of repairing the same to be repayable out of a separate rate levied on the hundred.

Held, that the maintenance and repair of main roads in the hundreds were "general county purposes" within the meaning of ss. 11, 23, and 68 of the Local Government Act, 1888, so that the county council were entitled to apply moneys taken from the Exchequer contribution account in recouping the general county fund so much of the costs of such maintenance and repair as was not provided for by the special rates on the hundreds. *R.* v. *Dolby*, [1892] 2 Q. B. 736; 61 L. J. Q. B. 826; 67 L. T. (N.S.) 619.

Roads and tolls in Isle of Wight.

12.—(1.) After the appointed day, tolls shall cease to be taken on any road maintained and repaired by the Isle of Wight Highway Commissioners, under the Isle of Wight Highway Acts, 1813 and 1883, and after such day the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act, shall apply to the Isle of Wight, and to every such road above mentioned, in like manner as if it were ceasing within the meaning of the said Act to be a turnpike road, and the Act of the session of the forty-fourth and forty-fifth years of the reign of Her present Majesty, chapter seventy-two, shall be repealed.

44 & 45 Vict c. 72.

The Isle of Wight Highway Acts are 53 Geo. 3, c. xcii. and 46 & 47 Vict. c. ccxxvi. Sect. 12 (1).

NOTE. The Isle of Wight was formerly exempt from the operation of the Highway Acts. See 5 & 6 Will. 4, c. 50, s. 113 ; 25 & 26 Vict. c. 61, s. 7 ; 41 & 42 Vict. c. 77, ss. 2, 27 ; 44 & 45 Vict. c. 72. The text repeals the last-mentioned Act, which exempted the Isle of Wight from liability to contribute to the county rate for the expenses of main roads ; this exemption is now taken away and the roads in the island are now repairable as main roads.

(2.) Until provision is otherwise made by Parliament, or by a provisional order confirmed by Parliament, the repair and maintenance of the said roads shall continue to be undertaken by the said commissioners, and the county council for the county of Southampton shall pay such commissioners, in respect of the said repairs and maintenance, and of the expenses of the commissioners, such sums as may be agreed upon, or, in case of difference, be settled by arbitration under this Act, and the provisions of this Act with respect to main roads shall apply as if the commissioners were a district council who had undertaken the maintenance and repair of such road.

In the year 1889 the Isle of Wight was made a separate administrative county by provisional order confirmed by 52 & 53 Vict. cc. lxxvii. Article 21 of the Order provides for the substitution of the county council of the Isle of Wight for that of the County of Southampton in the text.

The commissioners above referred to were the Isle of Wight Highway Commissioners mentioned in the preceding sub-section, appointed under 46 & 47 Vict. c. ccxxvi., ss. 5—15. These commissioners were abolished by the Local Government Act, 1894, s. 25, *post*, and their duties under this section were transferred to the rural district councils. *In re the Isle of Wight Highway Commissioners* 78 L. T. (N.S.) 569 ; 59 J. P. 438.

It should be observed that the text provides only for the cost of repair and maintenance ; the words "improvement and enlargement of and otherwise dealing with" used in s. 11 *ante*, are here omitted ; the arbitration, moreover, is under s. 62, and not by the Local Government Board as under s. 11.

Adaptation of Act to South Wales roads.

13.—(1.) After the appointed day no county road rate shall be levied, and tolls shall cease to be taken on any road maintained and repaired by a county roads board in South Wales, in pursuance of the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, and after such day the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act, shall apply to every county in South Wales as if the highway districts in that county had been constituted under the Highway Act, 1862, and the Highway Act, 1864, or one of those Acts, and shall apply to every such road as above-mentioned, in like manner as if it were ceasing, within the meaning of the said Act, to be a turnpike road.

7 & 8 Vict. c. 91.

25 & 26 Vict. c. 61.

27 & 28 Vict. c. 101.

By 7 & 8 Vict. c. 91, in each of the six counties of South Wales—namely, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan—a

Sect. 13 (1) NOTE. county roads board was appointed, consisting of from six to twelve justices appointed by quarter sessions and certain *ex officio* members, to have the superintendence, control, and management of all turnpike roads in the county. They had power to continue existing toll gates and to erect others and to take tolls. They might discontinue tolls on any road, and thereupon such road became an ordinary highway. By the same Act the commissioners who were appointed by the Act "for consolidating and adjusting the turnpike trusts of South Wales" might mark out and define in each county districts, which, subject to the superintendence and authority of the county roads board, should be placed under the care and management of district roads boards. The members of these district boards were originally nominated by the commissioners out of persons possessing a prescribed qualification, all justices residing within the district being *ex officio* members; vacancies were from time to time filled up by the board, the elective members retiring by rotation. The officers of the district boards were appointed by the county roads board. The duties of a district board were to direct and superintend all matters and things relating to the maintaining, repairing, and draining of the turnpike roads in the district, and the execution of any work or improvement placed under their direction and superintendence by the county roads board. Each district board annually elected two members to serve on the county road board. The tolls received were paid into the county roads fund, and if that were insufficient for the expenses payable out of it, the quarter sessions had to make a county road rate to supply the deficiency.

By 14 & 15 Vict. c. 16, the county roads board of each county was required to divide the county into highway districts for the separate management of the ordinary highways therein. For each district a highway board was to be appointed, consisting of the guardians elected for each parish in the district and the resident justices. The Act was repealed by 23 & 24 Vict. c. 68, but the repeal did not affect existing districts. The county roads board were empowered to alter districts and appoint surveyors for each district. All land or property which would otherwise have become vested in the surveyor of any parish under 5 & 6 Will. 4, c. 50, was transferred to the highway board, which took over the care and management of the ordinary highways.

The expenses of maintenance, etc., are chargeable to each parish and levied by a highway rate. Subject to the provisions of the Act and later amending Acts, the 5 & 6 Will. 4, c. 50, applies to ordinary highways in South Wales.

The text abolishes these county roads boards and makes the roads formerly repairable by them main roads. Consequently they are now repairable by the county councils under the provisions of s. 11, *ante*, and that section applies in all respects as if these roads had been main roads under the Highways, etc., Act, 1878.

(2.) On the appointed day every county roads board and district roads board in each county shall cease to exist, and the property, debts, and liabilities of any such board shall be transferred to the county council, and that council shall be the successors of the county and district roads boards, and the provisions of this Act, with respect to the transfer of the property, debts, and liabilities of quarter sessions to county councils, and with respect to the officers and servants of quarter sessions, shall apply as if they were herein re-enacted and made applicable to the

property, debts, liabilities, and officers of the said county and district roads boards. Sect. 13 (2).

As to these county roads boards and district roads boards, see note to sub-s. (1) *supra*. These bodies are now abolished, and their property, debts, etc., are transferred to the county councils in like manner as if it were property, etc., under s. 64, *post*. The provisions as to officers are contained in ss. 118 –120, *post*.

(3.) For the following purposes (that is to say) :

(*a*.) For giving effect to the said transfer of the property, debts, and liabilities, and for controlling the officers and servants transferred by this section to the county council, and otherwise winding up the affairs of the county and district roads boards ; and

(*b*.) For the purpose of the appointment of the surveyor of a highway board, the alteration of a highway district, and other purposes relating to highway boards ;

the county council of every county in South Wales shall have all the powers of a county roads board in a county under the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, so, however, that nothing shall confer on the county council any power to levy any toll or county road rate.

This provision simply provides that the county councils shall have all the powers of a county roads board for the purposes specified.

The surveyor of a highway board is appointed under 23 & 24 Vict. c. 68, s. 3 ; highway districts are altered under s. 2.

Power to county council to enforce provisions of 39 & 40 Vict. c. 75.

14.—(1.) On and after the appointed day a county council shall have power, in addition to any other authority, to enforce the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the restrictions in that Act contained), in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers and duties as if they were a sanitary authority within the meaning of that Act, or any other authority having power to enforce the provisions of that Act, and the county were their district.

Parts I. and II. of the Rivers Pollution Prevention Act, 1876, relate to pollution of streams by solid matters and sewage. Section 6 provides that proceedings shall not be taken under Part III. of the Act (which deals with manufacturing and mining pollution), save by a sanitary authority and with the consent of the Local Government Board. If the sanitary authority, on the application of a person interested, refuses to take proceedings, such person may apply to the Local Government Board, who, after inquiry, may direct the sanitary authority to take proceedings. The Local Government Board are not to give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting

Sect. 14 (1). liquids proceeding from the processes of such manufactures, are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry. Any person against whom proceedings are proposed to be taken under Part III. of the Act, notwithstanding any consent of the Local Government Board, may object before the sanitary authority to such proceedings being taken, and the authority must, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The authority must thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority must determine, having regard to all the considerations to which the Local Government Board are by the section directed to have regard, whether such proceedings shall be taken or not. When any authority has taken proceedings under the Act, no other sanitary authority may take proceedings under this Act, until the party against whom the proceedings are intended has failed in reasonable time to carry out the order of any competent court under the Act. By s. 8, every sanitary authority, subject to the restrictions in the Act, have power to enforce the provisions of the Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against the Act which causes interference with the due flow within their district of any stream, or the pollution within their district of any stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority. Proceedings under the Act may be taken in the county court (s. 10). By s. 13, two months' notice of proceedings under the Act must be given.

NOTE.

The provision in the text enables a county council to institute proceedings under the Rivers Pollution Prevention Act, in all cases in which that could be done by a sanitary authority, and, of course they will be able to institute proceedings against any sanitary authority in respect of sewage pollution.

Proceedings against a sanitary authority are facilitated by the 56 & 57 Vict. c. 31 (1893), which provides that where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall for the purposes of s. 3 of the Act of 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

This Act may be said to embody the decisions in *Yorkshire West Riding County Council* v. *Holmfirth Urban Sanitary Authority*, [1894] 2 Q. B. 842 ; 63 L. J. Q. B. 485 ; 71 L. T. (N.S.) 217 ; 59 J. P. 213. See also s. 17 of the Public Health Act, 1875, and the notes thereto in Lumley's Public Health. The Acts of 1876 and 1893 are set out in the last mentioned work pp. 1058, 1336.

(2.) Any county council shall have power to contribute towards the costs of any prosecution under the said Act instituted by any other county council or by any urban or rural authority.

The prosecution here referred to is a proceeding in the county court under the Act.

(3.) The Local Government Board, by Provisional Order made on the application of the council of any of the counties concerned, may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof, passes,

and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the Order; and the Order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers. Sect. 14 (3).

As to the making of a Provisional Order, see s. 87, *post*.

As to the definition of an "administrative county," see s. 100, *post*.

The joint committee may be invested under this sub-section with all necessary powers to prevent the pollution of a stream at any point of its course. Under sub-s. (1) the control of a county council is limited to so much of the stream as is within or adjoins the county.

Council to have power to oppose Bills in Parliament.

15. The county council of an administrative county shall have the same powers of opposing Bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the county, as are conferred on the council of a municipal borough by the Act of the thirty-fifth and thirty-sixth years of Victoria, chapter ninety-one; and subject as hereinafter provided the provisions of that Act shall extend to a county council as if such council were included in the expression "governing body," and the administrative county were the district in the said Act mentioned.

Provided that—

(*a.*) No consent of owners and ratepayers shall be required for any proceedings under this section;

(*b.*) This section shall not empower a county council to promote any Bill in Parliament, or to incur or charge any expense in relation thereto.

The Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict. c. 91), s. 2, enables a governing body to promote or oppose any local and personal Bill in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interest of the inhabitants of the district, and to apply the public funds or rates under their control to the payment of the costs and expenses attending the same. This power is now extended to county councils, except that they have no power to promote a Bill in Parliament. The Act further provides that no parliamentary costs shall be incurred except in pursuance of a resolution of an absolute majority of the whole number of the governing body, after ten clear days' notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting. Further, the resolution must be published twice in a local newspaper, and must receive the approval of the Local Government Board in respect of matters within the jurisdiction of that Board, and in respect of other matters of a Secretary of State. The text dispenses with the consent of the owners and

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ratepayers of the district, which must be given in the case of other governing bodies.

NOTE.

It does not follow, however, from the Borough Funds Act as applied by the text, that the county council will have no power to institute or defend legal proceedings, or to oppose Bills in Parliament, except pursuant to the provisions of that Act. A body like a county council may have power independently of any statute to devote the funds in their hands for the protection of the rates or of their powers and privileges. See on this subject *Bright* v. *North*, 2 Ph. 216; *Att.-Gen.* v. *Wigan* (*Corporation of*), Kay, 268; 5 D. M. & G. 52; *R.* v. *Sheffield* (*Mayor, etc., of*), L. R. 6 Q. B. 652; *R.* v. *Kingsbridge Highway Board*, 32 J. P. 562; *Att.-Gen.* v. *Brecon* (*Mayor, etc. of*), 10 Ch. D. 204; *R.* v. *White*, 14 Q. B. D. 358; 54 L. J. M. C. 23; 52 L. T. (N.S.) 116; 23 W. R. 248; 49 L. P. 294; *Cleverton* v. *St. Germains Rural Sanitary Authority*, 56 L. J. Q. B. 83.

The 54 Vict. c. 12 provides that a county council shall be entitled to be a petitioner and to appear and oppose any Bill to confirm a Provisional Order made under s. 24 of the Railway and Canal Traffic Act, 1888, and to provide or contribute towards providing the expenses of the appearance or opposition of a petitioner out of the funds or rates under their control, as if the Bill was a local or personal Bill within the meaning of s. 2 of the Borough Funds Act, and the provisions of that Act are to apply to any such appearance or opposition, and to any expenses incurred or to be incurred in relation thereto. It is further provided that no consent of owners or ratepayers shall be required.

Power of county council to make bye-laws.

45 & 46 Vict. c. 50.
38 & 39 Vict. c. 55.

16.—(1.) A county council shall have the same power of making bye-laws in relation to their county, or to any specified part or parts thereof, as the council of a borough have of making bye-laws in relation to their borough under section twenty-three of the Municipal Corporations Act, 1882, and section one hundred and eighty-seven of the Public Health Act, 1875, shall apply to such bye-laws:

(2.) Provided that bye-laws made under the powers of this section shall not be of any force or effect within any borough.

The provisions of s. 23 of the Municipal Corporations Act, 1882, are set out, *post*. See the notes to that section, where the cases are collected.

Section 187 of the Public Health Act, 1875, is as follows:—

"Bye-laws made by the council of any borough under the provisions of section ninety of the Act of the sixth year of King William the Fourth chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act."

It would appear at first sight that all bye-laws made by a county council under the provisions in the text (whether for good rule and government, or for the prevention and suppression of nuisances), require to be confirmed by the Local Government Board under ss. 187 and 184 of the Public Health Act, 1875. But reading s. 23 of the Municipal Corporations Act, 1882 (which is incorporated by s. 75, *post*), with the present section, the true view seems to be that in the case of a county council, as well as of a borough council, bye-laws for good rule and government come into force on the expiration of forty days after a copy has been sent to the Secretary of State, if not disallowed in

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the interval, and do not require confirmation by the Local Government Board under the Public Health Act. This view has been acted on by that Board, and was upheld by LINDLEY and KAY, L.JJ. (sitting as a Divisional Court), in *Strickland* v. *Hayes*, 65 L. J. M. C. 55; 74 L. T. (N.S.) 137; 44 W. R. 398; 60 J. P. 164; the decision on this point is omitted from the report of the same case, [1896] 1 Q. B. 290. And in *Mantle* v. *Jordan*, [1897] 1 Q. B. 248; 66 L. J. Q. B. 224; 75 L. T. (N.S.) 552; 61 J. P. 119, although the point was not argued, a bye-law of a county council for good rule and government, approved only by the Secretary of State, was held to be valid by WILLS and WRIGHT, JJ. Bye-laws for the prevention and suppression of nuisances must be made and confirmed pursuant to ss. 182—186 of the Public Health Act, which are as follows :—

"182. All bye-laws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such bye-law may be altered or repealed by a subsequent bye-law made pursuant to the provisions of this Act: Provided that no bye-law made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

"183. Any local authority may, by any bye-laws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority: but all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

"Nothing in the provisions of any Act incorporated herewith shall authorize the imposition or recovery under any bye-laws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

"184. Bye-laws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such bye-laws be confirmed—

"Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such bye-laws relate, one month at least before the making of such application; and

"Unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward.

"The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed bye-laws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

"A bye-law required to be confirmed by the Local Government Board shall not require confirmation, allowance, or approval by any other authority.

"185. All bye-laws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such bye-laws relate, on his application for the same; a copy of any bye-laws made by a rural authority shall also be transmitted to the overseers of every parish to which

Sect. 16 (2). such bye-laws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours.

NOTE. "186. A copy of any bye-law made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making, confirmation and existence of such bye-laws without further or other proof."

The provisions of the last of the above-quoted sections should be noticed, as they supersede apparently s. 24 of the Municipal Corporations Act, 1882, so far as regards bye-laws made by a county council for the suppression of nuisances.

Power of county councils to appoint medical officer of health.

17.—(1.) The council of any county may, if they see fit, appoint and pay a medical officer of health, or medical officers of health, who shall not hold any other appointment or engage in private practice without express written consent of the council.

For the qualification of these medical officers of health, see the next section.

(2.) The county council and any district council may from time to time make and carry into effect arrangements for rendering the services of such officer or officers regularly available in the district of the district council, on such terms as to the contribution by the district council to the salary of the medical officer, or otherwise, as may be agreed, and the medical officer shall have within such district all the powers and duties of a medical officer appointed by a district council.

The powers and duties of a medical officer of health appointed by a district council (*i.e.*, by a sanitary authority; see s. 100, *post*) are contained in the Public Health Act, 1875, but are too numerous to be stated here in detail.

(3.) So long as such an arrangement is in force, the obligation of the district council under the Public Health Act, 1875, to appoint a medical officer of health shall be deemed to be satisfied without the appointment of a separate medical officer.

The obligation of a district council here referred to is that arising under ss. 189, 190, of the Public Health Act, 1875. If the district council enter into an arrangement with the county council under sub-s. (2), they need not appoint a medical officer for their own district.

Qualification of medical officers of health.

18. Except where the Local Government Board, for reasons brought to their notice, may see fit in particular cases specially to allow, no person shall hereafter be appointed the medical officer of health of any county or county district, or combination of county districts, or the deputy of any such officer, unless he be legally qualified for the practice of medicine, surgery, and midwifery.

For definition of "county district," see s. 100, *post*.

A county district is an urban or rural district. See s. 100, *post*, and s. 21 (3) of the Local Government Act, 1894, *post*.

The Public Health Act, 1875, s. 191, simply required that a medical officer of health should be a legally qualified medical practitioner, *i.e.*, simply a

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person registered under 21 & 22 Vict. c. 90. A person might, before June 1st, 1887, when the 49 & 50 Vict. c. 48 came into operation, have been registered though qualified for the practice of medicine only, or of surgery only. A medical officer of health must now possess the triple qualification, unless the Local Government Board grants a special dispensation, and this cannot be done in cases falling within the next sub-section.

The same medical officer may be appointed for two or more districts under s. 191 of the Public Health Act, 1875, with the sanction of the Local Government Board. And by s. 286 the Local Government Board may, by order, unite two or more districts in the same county for the purpose of appointing a medical officer of health. The same section provides that in case of illness or incapacity of the medical officer of health, a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board.

(2.) No person shall after the first day of January, one thousand eight hundred and ninety-two, be appointed the medical officer of health of any county or of any such district or combination of districts, as contained, according to the last published census for the time being, a population of fifty thousand or more inhabitants, unless he is qualified as above-mentioned, and also either is registered in the medical register as the holder of a diploma in sanitary science, public health, or State medicine under section twenty-one of the Medical Act, 1886, or has been during three consecutive years preceding the year one thousand eight hundred and ninety-two a medical officer of a district or combination of districts, with a population according to the last published census of not less than twenty thousand, or has before the passing of this Act been for not less than three years a medical officer or inspector of the Local Government Board.

49 & 50 Vict. c. 48.

Since January 1st, 1892, it has not been lawful to appoint a medical officer of health for any county, district, or combination of districts containing a population of over 50,000, unless he possesses the triple qualification already mentioned, and has, in addition, either (1) been registered as the holder of a diploma in sanitary science under 49 & 50 Vict. c. 48, s. 21 ; or (2) during 1889, 1890, and 1891 been a medical officer for a district or combination of districts having a population of over 20,000 ; or (3) been for three years previous to August 13th, 1888, a medical officer or inspector of the Local Government Board.

The 49 & 50 Vict. c. 48, s. 21, provides that every registered medical practitioner to whom a diploma for proficiency in sanitary science, public health, or State Medicine has, after special examination, been granted by any college or faculty of physicians or surgeons, or university, in the United Kingdom, or by any such bodies acting in combination, shall, if such diploma appears to the Privy Council, or to the General Council, to deserve recognition in the medical register, be entitled, on payment of such fee as the General Council may appoint, to have such diploma entered in the said register, in addition to any other diploma or diplomas in respect of which he is registered.

The medical officer of health of the Local Government Board is appointed under 21 & 22 Vict. c. 97, s. 4 ; 34 & 35 Vict. c. 70. Inspectors are appointed under 10 & 11 Vict. c. 109, s. 19, and 34 & 35 Vict. c. 70.

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Power of county council as to report of medical officer of health.

19.—(1.) Every medical officer of health for a district in any county shall send to the county council a copy of every periodical report of which a copy is for the time being required by the regulations of the Local Government Board to be sent to the Board, and if a medical officer fails to send such copy the county council may refuse to pay any contribution, which otherwise the council would in pursuance of this Act pay, towards the salary of such medical officer.

The periodical reports here referred to are those prescribed by the Local Government Orders, which are set out in the Appendix to Lumley's Public Health, at p. 1497. They include the periodical reports as to sickness and mortality and the annual report made in the month of December in every year.

The contribution of the county council towards the salary of the medical officer is payable under s. 24, sub-s. (2), *post*.

(2.) If it appears to the county council from any such report that the Public Health Act, 1875, has not been properly put in force within the district to which the report relates, or that any other matter affecting the public health of the district requires to be remedied, the council may cause a representation to be made to the Local Government Board on the matter.

This representation will probably amount to a complaint under s. 299 of the Public Health Act, 1875. If so, the Local Government Board, if satisfied of the alleged default after due inquiry, may make an order on the local authority for the performance of their duty, and may enforce this order by *mandamus*, or they may appoint a person for the performance of the duty and recover the expenses from the authority.

A further remedy in a case where a district council have failed to enforce the Public Health Acts may be put in force by the county council on the complaint of a parish council or parish meeting: Local Government Act, 1894, ss. 16, 19 (8), *post*.

Financial Relations between Exchequer and County, and Contributions by County for Costs of Union Officers.

Payment to county council of proceeds of duties on local taxation licences.

20.—(1.) After the financial year ending on the thirty-first day of March next after the passing of this Act, the Commissioners of Inland Revenue shall from time to time, in such manner and under such regulations as the Treasury from time to time prescribe, pay into the Bank of England to such account (in this Act referred to as the Local Taxation Account) as may be fixed by the regulations, such sums as may be ascertained in manner provided by the regulations, to be the proceeds of the duties collected by those Commissioners in each administrative county in England and Wales on the licences (in this Act referred to as local taxation licences) specified in the First Schedule to this Act, and for the purposes of this section all penalties and forfeitures recovered in

respect of the said duties shall be considered as part of the proceeds of the duties. Sect. 20 (1)

As to the financial year, see s. 73, *post*.
For the definition of "administrative county," see s. 100, *post*.
See Schedule I., *post*, as to the licences here referred to.
In addition to these licences however, the excise duty and the duty on the licence for a light locomotive are to be dealt with in manner directed with respect to duties on local taxation licences, within the meaning of this Act. See Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 8, Appendix, *post*.
There has also to be paid into the Local Taxation Account the annual grant under the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16); that grant has to be issued from the account half-yearly to each spending authority in manner provided by the Act, which is set out in the Appendix, *post*.

(2.) The amount ascertained as aforesaid to have been collected in each county in respect of duties on local taxation licences shall, from time to time, be certified by the Commissioners of Inland Revenue, and paid under the direction of the Local Government Board out of the Local Taxation Account to the council of such county. The Commissioners may, if they think fit, vary such certificate, but unless so varied, their certificate shall be conclusive.

The amount is to be ascertained in manner provided by the regulations of the Treasury, under sub-s. (1).

(3.) It shall be lawful for Her Majesty the Queen from time to time, by Order in Council made on the recommendation of the Treasury, to transfer to county councils as from the date specified in the Order the power to levy the duties on all or any of the local taxation licences, and after such date every county council and their officers shall (subject nevertheless to any exceptions and modifications contained in the Order) have within their county, for the purpose of levying the duties transferred, the same powers, duties, and liabilities as the Commissioners of Inland Revenue and their officers have with respect to the duties transferred, and to the issue and cancellation of licences on which the duties are imposed, and other matters under the Acts relating to those duties and licences, and all enactments relating to those duties and licences, and to punishments and penalties connected therewith, shall apply accordingly.

The duties are still collected, and the Acts relating to the licences enforced, by the officers of Inland Revenue as heretofore, the amount levied being paid in to the Local Taxation Account under sub-s. (1). The text enables all the powers, etc., as to the levying and enforcing of these duties, to be transferred to the county council and their officers, subject to the provisions of the next sub-section, but no Order in Council making such transfer has yet been made.

Sect. 20 (4).

(4.) Provided as follows :—

(i.) All penalties and forfeitures recovered by a county council in pursuance of this section shall, instead of being paid to the Exchequer, be paid to the county fund, and carried to the same account as the duties.

(ii.) The county council shall have, as respects the said duties and licences, the power given by the said Acts to the Treasury for the restoration of any forfeiture, and the mitigation or remission of any penalty or any part thereof.

(iii.) Nothing in this section shall confer on the county council any special privileges of the Crown as respects legal proceedings.

As to the county fund and accounts, see s. 68. The duties and penalties will be paid to the Exchequer Contribution Account, under s. 23, *post*.

As to the powers of the Treasury to restore forfeitures, etc., see now 53 & 54 Vict. c. 21, s. 35.

See also s. 98, which contains a saving for the powers of Commissioners of Inland Revenue and Customs.

(5.) On a transfer under this section of the power to levy the duties on any licence—

(*a*.) The county council shall provide for issuing, in different parts of their county, their licence for the same purpose, so as to enable persons to obtain it near their residences; and

(*b*.) If such licence has operation in any place in the United Kingdom outside the county in which it is issued, the licence of a county council for the same purpose shall continue to have the like operation outside the county in such place.

Many licences, such as gun and dog licences, are available throughout the country. Such licences would have the same operation notwithstanding any transfer made under this section.

Grant to county council of portion of probate duty.

21. After the financial year ending the 31st day of March next after the passing of this Act, the Commissioners of Inland Revenue shall, from time to time, in such manner and under such regulations as the Treasury may from time to time prescribe, pay into the Bank of England to the Local Taxation Account, such sums as may be ascertained in manner provided by the regulations to be four-fifths parts of one half of the proceeds of the sums collected by them in respect of the probate duties, and for the purpose of this section "probate duties" means the stamp duties charged on the affidavit required from persons applying for probate or letters of administration in England, Wales, or Ireland, and on the

inventory exhibited and recorded in Scotland, and also the stamp duties charged on such accounts of personal and movable property as are specified in section thirty-eight of the Customs and Inland Revenue Act, 1881, and also includes the proceeds of all penalties and forfeitures recovered in relation to such stamp duties.

44 & 45 Vict. c. 12.

The Finance Act, 1894 (57 & 58 Vict. c. 30), s. 19, provides that in substitution for the grant out of the probate duties under this Act, there shall be paid out of the proceeds of the estate duty derived from personal property such sum as the Commissioners in accordance with regulations made by the Treasury under this Act may determine to be an amount equal to one and a-half per cent. on the net value of such of the property in respect of which estate duty is leviable as would formerly have been chargeable with the duty imposed by s. 27 of the Customs and Inland Revenue Act, 1881, on inland revenue affidavits.

The accounts specified in 44 & 45 Vict. c. 12, s. 38, as amended by 52 & 53 Vict. c. 7, s. 11, include accounts of property taken under a *donatio mortis causa*, or under certain other dispositions, etc., made by a deceased person.

The Finance Act, 1894, s. 1, provides that where property is chargeable with estate duty under that Act, the duties mentioned in 44 & 45 Vict. c. 12, s. 38, as so amended, shall not be levied in respect of such property.

In addition to the share of the estate duty payable under this section to the Local Taxation Account, certain additional duties on spirits and beer are also to be paid into that account under 53 Vict. c. 8, s. 7, *post*. A portion of the sum so paid in is applicable to police superannuation, and the residue is to be distributed between county and county borough funds, and carried to the Exchequer Contribution Accounts of those funds, under s. 23, *post*. The sums so received may be applied for purposes of technical education. See 53 & 54 Vict. c. 60 ; 54 & 55 Vict. c. 4, s. 2. Both these Acts are set out *post*.

Distribution of probate duty grant.

22.—(1.) The sums paid in pursuance of this Act to the Local Taxation Account, in respect of the proceeds of the probate duties (in this Act referred to as the "probate duty grant"), shall, until Parliament otherwise determine, be distributed among the several counties in England and Wales in proportion to the share which the Local Government Board certify to have been received by each county during the financial year ending the thirty-first day of March next before the passing of this Act out of the grants heretofore made out of the Exchequer in aid of local rates, which will cease to be granted after the passing of this Act, and the share to be so certified shall be estimated in such manner as the Local Government Board direct.

The share to which each county is entitled thus depends on the amount received by it during the year ending March 31st, 1888, out of the Exchequer in aid of local rates, and (subject to any variation, made under sub-s. (3) of this section, of the certificate of the Local Government Board) the proportion so determined will remain fixed until Parliament otherwise provides.

Sect. 22 (2).

(2.) In the case of the six counties of South Wales and the Isle of Wight there shall be added to the amount actually received out of such grants as aforesaid such additional sum as the Local Government Board certify to be the amount which each of the said counties and the Isle of Wight would have received, if the roads maintained by the county roads boards or the highway commissioners had been main roads.

As already stated (see the notes to ss. 12 and 13, *ante*), the Isle of Wight and the counties in South Wales were not subject to the Highway Acts, and consequently no sum was ever granted out of the Exchequer in respect of main roads in these places. The sections referred to having made them subject to the Highway Acts, it was necessary to make provision for them as stated in the text.

(3.) The proportion to be paid to each county shall, from time to time, be paid under the direction of the Local Government Board to the county council out of the Local Taxation Account. The Board may, if they think proper, vary their certificate, but unless it is so varied, their certificate shall be conclusive.

As to the Local Taxation Account, see s. 20, *ante*.

Application of duties on local taxation licences and probate duty grant.

23.—(1.) All sums from time to time received by a county council in respect of—

(*a*.) The duties on the local taxation licences, whether collected by the Commissioners of Inland Revenue or by the county council; and

(*b*.) The probate duty grant,

shall be paid to the county fund and carried to a separate account, in this Act referred to as the Exchequer Contribution Account.

As to the duties on local taxation licences, see s. 20, *ante*.
As to the probate duty grant, see ss. 21, 22, *ante*.
As to the county fund, see s. 68, *post*.

(2.) All sums for the time being standing to the Exchequer Contribution Account shall be applied—

(i.) In paying the costs incurred in respect thereof, or otherwise chargeable thereon; and

(ii.) In payment of the sums required by this Act to be paid by the county council in substitution for local grants; and

(iii.) In payment of the grant required by this Act to be made by the county council in respect of costs of union officers; and

(iv.) In repaying to the general county account of the county fund the costs on account of general county purposes for

which the whole of the area of the county is liable to be assessed to county contributions; Sect. 23 (2).

and shall be so applied in the order above mentioned.

This and the following sub-sections will not apply to moneys received from the beer and spirit duties under 53 & 54 Vict. c. 60, and directed to be appropriated for technical or manual instruction. Such moneys, although not wholly expended during the financial year, are to remain applicable for the purposes of such instruction, and are not to be applied in manner provided by the text without a special order of the county council. See 54 Vict. c. 4, s. 2, *post*.

It is not quite clear what costs are incurred in respect of the Exchequer Contribution Account or are chargeable thereon.

The payment in substitution for local grants is made under s. 24, *post*.

The payment in respect of union officers is made under s. 26, *post*.

General county purposes are defined by s. 68, *post*.

(3.) If any surplus remains after paying the above costs and sums, such proportion of the surplus, as the total rateable value of the area of each quarter sessions borough exempt from contributing to any special county purpose, bears to the rateable value of the whole county, shall be paid to the council of that borough, and the remainder shall be applied as follows:

For the definition of a quarter sessions borough, see s. 100, *post*.

As to the determination of the rateable value, see sub-s. (10) and s. 100, *post*.

Special county purposes are defined by s. 68, *post*.

(4.) It shall first be applied towards repaying to the proper special accounts of the county fund, the costs on account of which the area of the county, exclusive of such quarter sessions boroughs, is liable to be assessed to county contributions;

As to the special accounts of the county fund, see s. 68, *post*.

(5.) Provided that where any of the said quarter sessions boroughs to which a payment of a proportion of the surplus is made as aforesaid is liable to be assessed to county contributions for any of such last-mentioned costs, there shall be deducted from the amount payable to the council of that borough in respect of the said surplus, such sum as would have been raised within the area of the borough if the amount of such costs had been raised by county contributions.

A proportion of the surplus is payable to a quarter sessions borough under sub-s. (3). The deduction to be made is to be the sum which would have been raised within the borough in respect of the costs mentioned in sub-s. (4).

(6.) If there remains any sum after repaying the said costs to the said accounts of the county fund, such residue shall be divided

Sect. 23 (6). as follows, that is to say, such proportion thereof as the total rateable value of the area of each borough maintaining a separate police force under the County and Borough Police Acts, and not being a quarter sessions borough above-mentioned, bears to the rateable value of the whole county, after deduction of the rateable value of every quarter sessions borough above-mentioned, shall be paid to the council of the borough, and the rest shall be applied towards repaying to the proper special accounts of the county fund the costs of the police, and other costs on account of which the area of the county, exclusive of all the said boroughs, is liable to be assessed to county contributions. Where, a town, not being a borough, maintains its own police and receives any payment from the county council in pursuance of this Act towards the pay and clothing of such police, this enactment shall apply to such town as if it were a borough, and as if the sanitary authority therein were the council of the borough.

In applying this sub-section it is necessary first to ascertain the rateable value of the county, exclusive of the quarter sessions boroughs mentioned in sub-s. (3). The proportion payable to the boroughs maintaining a separate police force is the proportion which the rateable value of such borough bears to that ascertained as above stated.

As to rateable value, see sub-s. (10) and s. 100, *post*.

As to the special county accounts, see s. 68, *post*.

The latter part of the sub-section applies only to a few towns which are boroughs in everything but name, and are governed under a local Act. See s. 24, sub-s. (4) and note, *post*.

(7.) If any balance remains after all the above payments are made, and is in excess of what the county council consider necessary to carry forward to the next account, such excess shall be divided among the district councils other than the councils of quarter sessions or other boroughs to whom portions of the surplus have been paid under the foregoing provisions of this section, and shall be so divided in proportion to the rateable value of the area of each district.

The county council have therefore a discretion to carry over the entire balance to the next account.

The district councils are the urban and rural district councils other than borough councils receiving any payment under the preceding sub-sections. As to rateable value, see sub-s. (10) and s. 100, *post*.

(8.) Where any part of a county is situate within the Metropolitan Police District, this section shall apply as if that part were the area of a borough maintaining a separate police force, save that the sum which would be payable to such borough shall be paid to the district councils of the county districts wholly or partly situate in such part, and shall be divided among such district councils in

proportion to the rateable value of the area of each district, or of so much thereof as is within the Metropolitan Police District. Sect. 23 (8)

The Metropolitan Police District comprises an area which may be roughl described as within a radius of 15 miles from Charing Cross. Its boundaries are fixed by 10 Geo. 4, c. 44, and by Orders in Council made under 2 & 3 Vict. c. 47, s. 2. The area is to be treated as if it were a borough within sub-s. (6), but the sum ascertained as provided by that sub-section is to be distributed among the district councils.

(9.) All sums paid in pursuance of this section shall be carried, if paid to the council of a borough, to the borough fund, and if paid to a district council other than the council of a borough, to the district fund, and shall be applied to purposes for which the whole of the borough or district is liable to be rated.

The district fund is, in urban districts, the general district fund under the Public Health Act, 1875, s. 209. In a rural district, the sum paid must be applied like a sum raised for general expenses under ss. 229, 230, of that Act.

(10.) The rateable value, for the purpose of this section, shall be determined according to the standard or basis for county contributions for the time being.

As to the rateable value when there is no such standard or basis, see s. 100; and as to the mode of calculating the rateable value of both a county and a county borough, see s. 33, *post*.

24. Whereas certain grants heretofore made out of the Exchequer in aid of local rates (in this Act referred to as local grants) will by reason of the duties on the local taxation licences and the probate duty grant being by this Act made payable to local authorities, cease, it is therefore hereby enacted as follows :— Payments by county council in substitution for annual local grants out of Exchequer in aid of local rates.

(1.) So much of any enactment as requires or authorizes payment out of the Exchequer of any local grant in substitution for which the county council is required by this Act to make any payment is hereby repealed as from the thirty-first day of March next after the passing of this Act without prejudice to any right accrued before that day.

As to the local taxation licences, see s. 20, *ante*.

As to the probate duty grant, see ss. 21, 22, *ante*.

Under this and the subsequent provisions of this section it was held that the county council in substitution for the Exchequer were bound to pay out of the county fund local grants in respect of the period between September 24th, 1888, and April 1st, 1889, though the county council did not come into existence until the latter date. *Re West Riding County Council*, 54 J. P. 533.

(2.) In substitution for local grants, the council of each county shall from time to time as from the said day pay out of the county

Sect. 24 (2) fund and charge to the Exchequer Contribution Account the following sums, that is to say—

(*a.*) They shall pay to the guardians for every poor law union or officer for any other area wholly or partly in the county (as the case may be) such sums as the Local Government Board from time to time certify to be due from the said council in substitution for the local grants towards the remuneration of teachers in poor law schools, and for payments to public vaccinators under section five of the Vaccination Act, 1867; and

30 & 31 Vict. c. 84.

As to the Exchequer Contribution Account, see s. 23, *ante*.

The sums formerly paid were the whole of the salaries of teachers in poor law schools; their salaries are therefore payable by the county council.

By 30 & 31 Vict. c. 84, s. 5, on reports made to the Lords of the Privy Council with regard to the number and quality of the vaccinations performed in the several vaccination districts in England, or any of them, the said Lords might from time to time, out of moneys provided by Parliament, and under regulations to be approved by the Treasury, authorize to be paid to any public vaccinators, in addition to the payments received by them from guardians or overseers, further payments not exceeding in any case the rate of one shilling for each child whom the vaccinator had successfully vaccinated during the time to which the award of the said Lords related.

In both of these cases the sums to be paid to the guardians of unions or officers of other poor law areas will be ascertained and certified by the Local Government Board.

(*b.*) They shall pay to the guardians of every poor law union the school fees paid for pauper children sent from a workhouse to a public elementary school outside the workhouse; and

This provision meets the case of children not educated in the workhouse but sent to a public elementary school.

(*c.*) They shall pay to every local authority, for any area wholly or partly in the county, by whom a medical officer of health or inspector of nuisances is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by order under the Public Health Act, 1875, or any Act repealed by that Act, but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by order of the Board under any of the said Acts, a sum equal to such half of the salary shall be forfeited to the Crown, and the council

38 & 39 Vict. c. 55.

shall pay the same into Her Majesty's Exchequer and not to the said local authority; and

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The reference in the text to the Public Health Act, 1875, is to be construed to include a reference to the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76). See s. 108 of that Act.

Every urban and rural district council are required by ss. 189 and 190 of the Public Health Act, 1875, to appoint one or more medical officers of health and inspectors of nuisances, but if any authority avail themselves of the services of a county medical officer under s. 17, *ante*, p. 44, they are to be deemed to have made the necessary appointment of a medical officer. (See sub-s. (3), *post*.)

The qualification of medical officers of health, save in so far as it is expressly provided by this Act (see s. 18, *ante*), and the appointment, salary, etc., of these officers and the inspectors of nuisances, are prescribed by ss. 189—191 of the Public Health Act, 1875, and various orders of the Local Government Board, which are referred to in the notes to those sections in Lumley's Public Health.

As to the reports of the medical officer, see the note to s. 19, sub-s. (1), *ante*, p. 46. The medical officer must send copies of these reports to the county council, otherwise they may refuse to pay the contribution towards his salary, but it is only in case of his failure to send the reports to the Board that the amount of the contribution is to be paid into the Exchequer.

(*d*.) They shall pay to the guardians paying the registrars of births and deaths for any district wholly or partly in the county a sum equal to the amount paid out of local grants towards the remuneration of the registrars paid by those guardians during the financial year ending on the thirty-first day of March next after the passing of this Act; and

This will be a fixed amount determined by the sum paid in the year ending March 31st, 1889.

The Acts relating to registrars of births and deaths are 6 & 7 Will. 4, c. 86; 1 Vict. c. 22; 29 & 30 Vict. c. 113, s. 1; 31 & 32 Vict. c. 122, s. 26; 37 & 38 Vict. c. 88. Registrars are paid by the guardians under 6 & 7 Will. 4, c. 86, s. 29.

(*e*.) They shall transfer to that account of the county fund to which the maintenance of any pauper lunatic chargeable to the county is charged, a sum equal to four shillings a week for each such pauper lunatic, for whom the net charge upon the county council, after deducting any amount received by the county council for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so transferred; and

Pauper lunatics may be chargeable to the county by virtue of justices' orders under the Lunacy Act, 1890 (53 Vict. c. 5), s. 290, *post*. They become so chargeable only when they have no known union of settlement. The amounts referred

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(*f.*) They shall pay to the guardians of every poor law union wholly or partly in the county a sum equal to four shillings a week for each pauper lunatic chargeable to that union, and maintained in an asylum, registered hospital, or licensed house, for whom the net charge upon the guardians, after deducting any amount received by them for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so paid ; and

A pauper lunatic is chargeable to the union from which he is sent unless it be established that he is settled in some other union, or that it cannot be ascertained in what union he was settled. See Lunacy Act, 1890, ss. 286, 290, *post.*

(*g.*) They shall pay to the council of each borough to which the maintenance of any pauper lunatic is chargeable, a sum equal to four shillings a week for each such pauper lunatic for whom the net charge upon the council of the borough, after deducting any amount received by them for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so paid ; and

A pauper lunatic may be made chargeable to the council of a borough if his settlement cannot be ascertained, and if he was sent to the asylum from a quarter sessions borough which is free from contributing to the payment of the expenses of pauper lunatics chargeable to the county in which the borough is situate. See Lunacy Act, 1890, s. 290, *post.*

(*h.*) They shall transfer to that account of the county fund to which the compensation payable to the clerk of the peace of a county, or any other officer of quarter sessions for the county, under section eighteen of the Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty-six, is charged, the amount of such compensation ; and

The 18 & 19 Vict. c. 126, s. 18, provides as follows :—"Immediately after the passing of this Act, the Commissioners of Her Majesty's Treasury shall, upon the application of any clerk of the peace or other officer of quarter sessions, by such means and in such manner as they may think proper, inquire into and ascertain the annual amount to be computed upon an average of five years immediately preceding the passing of this Act or of such shorter period

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as such clerk of the peace or other officer shall have been in office, of the fees and emoluments in criminal prosecutions received by the clerk of the peace or such other officer, and the said commissioners shall on the like application also ascertain, in such manner as they may think proper, the total amount of fees and emoluments in criminal prosecutions received by such clerk of the peace or other officer during any year after the passing of this Act, and the said Commissioners are hereby authorized and empowered by warrant under their hands to award to such clerk of the peace or other officer the deficiency when and so often as the same shall occur between the last-mentioned amount and the annual average amount so ascertained as aforesaid, and the sum so awarded shall be paid out of any moneys which may be provided by Parliament for that purpose : Provided that in all cases where any such clerk of the peace, by reason of his being paid by salary under an order made by virtue of 14 & 15 Vict. c. 55, shall pay such fees and emoluments as aforesaid to the treasurer of the county or borough for which he is clerk of the peace in aid of the county or borough rate, as the case may be, such deficiency when so ascertained as aforesaid shall be paid to the treasurer of such county or borough respectively."

(*i.*) They shall, subject to the provisions of this Act, transfer to the police account of the county fund a sum equal to one-half of the costs of the pay and clothing of the police of the county during the preceding year ; and

One half the cost of the pay and clothing of the county police will be paid out of this fund.

(*j.*) They shall, subject to the provisions of this Act, pay to the council of each borough maintaining a separate police force under the County and Borough Police Acts, one-half of the costs of the pay and clothing of the police of that borough during the preceding year ; and

The County and Borough Police Acts are the 19 & 20 Vict. c. 69, and the 22 & 23 Vict. c. 32 ; see sub-s. (4), *post*. The reference to the provisions of this Act is to s. 39, by which the separate police force in the smaller boroughs is abolished.

It was held in *R.* v. *West Riding County Council*, [1895] 1 Q. B. 805 ; 64 L. J. M. C. 145 ; 72 L. T. (N.S.) 520 ; 43 W. R. 386 ; 59 J. P. 340, that a borough which maintains a separate police force is entitled to be paid by the county council under the provision in the text one half of the costs of the pay and clothing of extra police temporarily added from another police force under s. 25 of the Police Act, 1890 (53 & 54 Vict. c. 45), and paid for by agreement under that Act.

(*k.*) They shall, if within their county sums are raised by rates for the purpose of the metropolitan police, pay to the receiver for the Metropolitan Police District in each year, a sum bearing such proportion to the sum actually raised in the same year by rates from the parishes in that county for the said purpose as a Secretary of State certifies to be the proportion which would have been

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contributed out of the Exchequer under the arrangement in force during the financial year next before the passing of this Act.

The Metropolitan Police Rate Act, 1868 (31 & 32 Vict. c. 67), s. 2, provides that the annual sum to be provided in pursuance of the Acts relating to the metropolitan police force shall not exceed ninepence in the pound, calculated on the full annual value of all property rateable to the relief of the poor within the parishes and places comprised in the Metropolitan Police Districts, and of such annual sum to be so provided, one-fourth part shall be contributed by the Treasury out of moneys for that purpose provided by Parliament and three-fourth parts shall be raised by a rate in manner provided by the said Acts. The payment provided for by the text takes the place of the Treasury grant, and is limited to the amount certified by the Secretary of State.

The Acts relating to the expenses of the metropolitan police are 10 Geo. 4, c. 44, ss. 23—33 ; 2 & 3 Vict. c. 47, ss. 2, 6 ; 19 & 20 Vict. c. 2 ; 20 & 21 Vict. c. 64, ss. 11—14 ; 24 & 25 Vict. c. 124, ss. 1, 7 ; 31 & 32 Vict. c. 67, s. 2 ; 32 & 33 Vict. c. 67, ss. 45, 77 ; and 53 & 54 Vict. c. 45, s. 27.

The boundaries of the Metropolitan Police District are fixed by the 10 Geo. 4, c. 44, and by Orders in Council made under 2 & 3 Vict. c. 47. The district now comprises an area within about fifteen miles from Charing Cross.

(3.) A reference in sections one hundred and eighty-nine and one hundred and ninety-one of the Public Health Act, 1875, to officers any portion of whose salary is paid out of moneys provided by Parliament shall be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of this section.

The Public Health Act, 1875, ss. 189 and 191, are as follows :—

"189. Every urban authority shall from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk and treasurer : Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants, collectors, and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed.

"Subject in the case of officers any portion of whose salary is paid out of moneys voted by Parliament, to the powers of the Local Government Board under this Act, the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries, wages, or allowances as the urban authority may think proper ; and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority at their pleasure."

"191. A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner ; and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification, appointment, duties, salary and tenure of office of a medical officer of health or other officer of a local

authority any portion of whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act. Sect. 24 (3). Note.

"The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities of such districts; and the Local Government Board shall by order prescribe the mode of such appointment, and the proportions in which the expenses of such appointment, and the salary and charges of such officer, shall be borne by such authorities.

"Any district medical officer of a union may, with the sanction of the Local Government Board, and subject to such conditions as the said board may prescribe, be appointed a medical officer of health; and a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act.

"In case of illness or incapacity of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board."

(4.) Where any payment towards the pay and clothing of the police of any town has been made in pursuance of section eighteen of the County and Borough Police Act, 1856, which authorizes such payment to be made until the discontinuance of the police, the like payment shall, notwithstanding anything in this section, be made by the county council to the authority of such town until such discontinuance. 19 & 20 Vict. c. 69.

The 19 & 20 Vict. c. 69, s. 18, provides that "until the constables or watchmen appointed in and for any parish, town, or place under the 3 & 4 Will. 4, c. 90, or under any local Act authorizing the appointment of constables or watchmen, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen, are discontinued as a separate force in manner provided by s. 20 of the 3 & 4 Vict. c. 88, and by this Act, all the provisions of this Act applicable to the constables of any borough acting under the 5 & 6 Will. 4, c. 76, shall be applicable to the constables or watchmen appointed under the 3 & 4 Will. 4, c. 96, or under such local Act as aforesaid, in and for such parish, town, or place, and until such discontinuance, all the provisions of this Act applicable to the watch committee of a borough shall be applicable to the inspectors, commissioners, or other persons having the appointment of constables or watchmen in and for such parish, town, or place; and the police of such parish, town, or place shall be visited and inquired into by the inspectors under this Act; and the provision in this Act enabling the Commissioners of Her Majesty's Treasury to make payment towards the expenses of the police of a borough having a population exceeding 5,000, shall, until such discontinuance, extend to the police of such parish, town, or place as aforesaid having the like population."

(5.) Where a sum is payable under this section to the guardians, authority, or officer of a union or other area, and such union or area is situate in more administrative counties than one, a proportionate part only of the sum otherwise payable shall be paid by the council of each of such counties to the guardians, authority, or

Sect. 24 (5). officer, and the Local Government Board shall certify the proportionate part due from the council of each such county.

For the definition of "administrative county," see s. 100, *post*. This provides for the cases of unions and similar areas which extend into more than one county ; since the passing of the Local Government Act, 1894, these are far fewer than formerly.

(6.) The guardians, authority, or officer to whom a sum is payable under this section on the certificate of the Local Government Board, shall submit to the Board their claim to the payment in such manner, and produce such evidence and comply with such rules as the Board from time to time require or make, and the Board shall fix the amount due on the like principles, and may impose the like conditions for the payment thereof as before the passing of this Act.

(7.) The Local Government Board may, if they think fit, vary a certificate granted for the purposes of this section, but, unless so varied, it shall be conclusive.

As to Secretary of State's power respecting efficiency of police.

25.—(1.) If a Secretary of State withholds, as respects the police of any county, his certificate under the County and Borough Police Act, 1856, that the police of the county has been maintained in a state of efficiency in point of numbers and discipline during the year ending on the twenty-ninth day of September, then last past, the council of that county, in lieu of transferring any sum under the foregoing provisions of this Act to the police account of the county fund, shall forfeit to the Crown, and shall pay into Her Majesty's Exchequer out of the county fund, and shall charge to the Exchequer Contribution Account of that fund, such sum as the Secretary of State certifies to be in his opinion equivalent to one half of the cost of the pay and clothing of the police of the county during the said year.

By the 19 & 20 Vict. c. 69, s. 15, Her Majesty is empowered to appoint inspectors whose duty it is to visit and inquire into the state and efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which the police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-ups, or other premises occupied for the use of the police ; and each of such inspectors is to report to a Secretary of State, who is to cause the report to be laid before Parliament, and the inspectors are to be paid out of moneys provided by Parliament. By s. 16, on the certificate of a Secretary of State that the police of any county or borough has been maintained in a state of efficiency in point of number and discipline for the year ending on September 29th then last past, the Treasury may pay out of moneys provided by Parliament such sum towards the expenses of the police as shall not exceed one-fourth of the charge for their pay and clothing (but such payment is not to extend to additional constables appointed under 3 & 4 Vict. c. 88, s. 19) : Provided that before any certificate shall be finally withheld in respect of the

police of any county or borough, the report of the inspector shall be sent to the justices or the watch committee, as the case may be, and in every case in which the certificate is withheld a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the justices or watch committee, shall be laid before Parliament. The grant by the Treasury will cease after this Act comes into operation and will be replaced by the grant out of the Exchequer Contribution Account under s. 24, sub-s. (2), *ante*. In future, if the certificate is withheld, the grant is to be paid into the Exchequer (see s. 27, *post*), instead of being placed to the credit of the police account.

Sect. 25 (1). NOTE.

(2.) If a Secretary of State withholds, as respects the police of any borough, his certificate under the County and Borough Police Act, 1856, that the police of the borough has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth day of September then last past, no payment shall be made by the county council to the council of the borough in respect of one-half of the costs of the pay and clothing of the police of that borough during the said year, and such amount as a Secretary of State certifies to be in his opinion the equivalent of such one-half shall be transferred by the county council from the Exchequer Contribution Account to the general county account and applied to the general purposes of the county.

19 & 20 Vict. c. 96.

See the note to the preceding sub-section.

In this case if the certificate is withheld the grant is to be paid to the general county account, as to which see s. 68, *post*.

26.—(1.) After the thirty-first day of March next after the passing of this Act, every county council, other than the London County Council, shall grant to the guardians of every poor law union wholly or partly in their county, an annual sum for the costs of the officers of the union and of district schools to which the union contributes; and, until Parliament otherwise determine, the said annual sum shall be such sum as the Local Government Board certify to have been expended by the guardians of each poor law union during the financial year ending the twenty-fifth day of March next before the passing of this Act, on the salaries, remuneration, and superannuation allowances of the said officers (other than teachers in poor law schools), and on drugs and medical appliances.

Grant by county council towards costs of officers of union.

The grant by the London County Council to the poor law unions is regulated by s. 43, *post*.

In a Circular Letter dated January 10th, 1889, and issued by the Local Government Board to boards of guardians throughout the country, the following opinion as to the meaning of the expression "officers of the union" is given :—

"The Act contains no definition of the expression 'officers of the union'; but the words clearly do not include parochial officers or officers appointed for

Sect. 26 (1). areas such as rural sanitary districts in which the jurisdiction of the guardians is not in all cases co-extensive with the union. In the opinion of the board, the following officers cannot be regarded as officers of the union for the purposes of the grant; and care should be taken to exclude any expenditure of the guardians in respect of them :—

Note.

Collectors of poor rates.
Assistant overseers.
Officers of rural sanitary authorities.
Officers of school attendance committees.
Superintendent registrars, and
Registrars of births, deaths, and marriages.

"On reference to section 100 of the Act, it will be seen that the expression 'officer' is to be construed according to the definition of 'office,' which is to include any 'place, situation, or employment.' (And see note to that definition, *post.*)

"In some instances officers, in respect of whose services in certain capacities no claim can properly be made against the grant, will have acted also in other capacities, and their salaries, remuneration, or superannuation allowances in the latter capacities will properly be chargeable on the grant. In these cases care should be taken to include only so much of the expenditure of the guardians as has been incurred on account of the services of these officers in the latter capacities.

"The board consider that the cost of the rations of officers may be included. The expenditure of the guardians for this purpose should be taken from the 'Rations Account' in the Union Ledger, with the necessary deduction in respect of teachers and assistant teachers."

Unions, or parishes not in unions, may be combined into school districts for the management of any class or classes of infant poor under the age of sixteen years chargeable to any such union or parish, who are orphans or deserted by their parents, or whose parents or surviving parent or guardians consent to the placing of such children in the school of the district. The Acts containing provisions relating to district schools are 7 & 8 Vict. c. 101; 11 & 12 Vict. c. 82; 14 & 15 Vict. c. 105; 29 & 30 Vict. c. 113; 30 & 31 Vict. c. 106; 31 & 32 Vict. c. 122; 42 & 43 Vict. c. 54.

The amount of the grant will, until Parliament otherwise determine, be the sum certified to have been expended during the year ending March 25th, 1889.

The salaries, etc., of teachers in poor law schools are provided for by the grant out of the Exchequer Contribution Account under s. 24, sub-s. (2) (*a*), *ante.*

The grant under this section will be paid out of the Exchequer Contribution Account as provided by s. 23, sub-s. (2), *ante.*

(2.) Where a poor law union is situate in more counties than one, the payment under this section to the guardians of the union shall be borne by the counties in which each portion of such union is situate, in proportion to the rateable value of that portion, ascertained on such day as the Local Government Board may fix.

The rateable value is to be ascertained by the standard or basis of the county rate, or if there is no such standard then by the valuation lists; see s. 100, *post.*

Sect. 27 (1).

Supplemental provisions as to Local Taxation Account and Exchequer Contribution Account.

27.—(1.) When a county council are required under the provisions of this or any other Act to pay any sum into Her Majesty's Exchequer, or to the Treasury, or to the Receiver for the Metropolitan Police District, such sum shall be deducted from the amount payable under the provisions of this Act out of the Local Taxation Account to such county council, and instead of being paid to the county council shall be paid into Her Majesty's Exchequer, or to the Receiver for the Metropolitan Police District, as the case requires.

Sums are payable into the Exchequer under s. 24, sub-s. (2) (*c*), s. 25, sub-s. (1).

The Treasury means the Commissioners of Her Majesty's Treasury. See s. 100, *post*.

Sums are payable to the Receiver for the Metropolitan Police District under s. 24, sub-s. (2), (*k*).

The text provides in effect that the total sum shall not be paid out of the Local Taxation Account and then partly repaid, but deducted in the first instance and paid directly to the Exchequer by the Commissioners of Inland Revenue.

(2.) The account of the receipts and expenditure of the Local Taxation Account shall be audited as a public account by the Comptroller and Auditor-General in accordance with such regulations as the Treasury may from time to time make.

(3.) If at any time in any financial year the moneys standing to the Local Taxation Account are insufficient to meet such sums as the Local Government Board consider proper for the time being to pay thereout, the Local Government Board may borrow temporarily on the security of the said account and of moneys becoming payable thereto such sums as they require for the purpose of meeting such deficiency, and the Bank of England may lend such sums, but all sums so borrowed shall be repaid with the interest thereon during the same financial year out of moneys payable to the said account.

The Bank of England means the Governor and Company of the Bank of England. See s. 100, *post*.

As to the financial year, see s. 73, *post*.

General Provisions as to Transfer.

General provisions as to powers transferred to county council.

28.—(1.) The county council shall, as respects the business by this Act transferred to them from quarter sessions or the justices out of sessions, be subject to the provisions and limitations in this Act specified, but, save as aforesaid, shall have and be subject to all the powers, duties, and liabilities which the quarter sessions, or

Sect. 28 (1). any committee thereof, or any justice or justices had or were subject to in respect of the business so transferred,

As to the transfer of business from quarter sessions, see in particular ss. 3, 4, 7, and 9, *ante*. As to the limitations in this Act specified, see s. 78, *post*. And as to the settlement of disputes as to transfer see the next section.

(2.) The county council shall, with the exceptions hereinafter mentioned, have power to delegate, with or without any restrictions or conditions as they may think fit, any powers or duties transferred to them by or in pursuance of this Act, either to any committee of the county council appointed in pursuance of this Act, or to any district council in this Act mentioned; the county council may also, without prejudice to any other power whether to appoint committees or otherwise, delegate to the justices of the county sitting in petty sessions any power or duty transferred by this Act to the county council in respect of the licensing of houses or places for the public performance of stage plays, and in respect of the execution as local authority of the Explosives Act, 1875, or of the Act relating to contagious diseases of animals.

38 & 39 Vict. c. 17.

Committees of the county council are appointed in pursuance of the Municipal Corporations Act, 1882, s. 22, *post*, which is applied to county councils by s. 75 of this Act. The proceedings of committees are regulated by s. 82. Joint committees are appointed under s. 81.

District councils are urban and rural district councils: see s. 100, *post*, and s. 21 of the Local Government Act, 1894, *post*.

In addition to the power of delegation to committees conferred upon county councils by the text there are provisions in several recent Acts requiring or authorizing county councils to appoint committees for the purposes mentioned in such Acts; see for instance, the Allotments Act, 1890 (53 & 54 Vict. c. 65), s. 3; the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), ss. 5, 16; the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 83; the Local Government (Elections) Act, 1896 (58 & 59 Vict. c. 1), s. 1. These provisions are set out, *post*.

The Act relating to contagious diseases of animals under which a county council now has powers and duties, is the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), *post*. That Act contains provisions enabling county councils to form committees, but it is expressly provided by s. 31 that nothing therein contained shall prejudice or affect the power of a county council to delegate their powers to any committee or body under the provisions in the text.

As to the powers of an executive committee appointed under the Diseases of Animals Act, see *Huth* v. *Clarke*, 25 Q. B. D. 391; 59 L. J. M. C 120; 63 L. T. (N.S.) 348; 38 W. R. 655; 6 T. L. R. 373. It appears from that decision that the delegation of powers to a committee will not deprive the county council of the right to exercise any power which the committee might exercise under the delegation.

The duties which may be delegated to justices are those transferred by s. 7, *ante*, and the execution of the Diseases of Animals Act, 1894. It is presumed that the committees appointed under this section must be composed only of members of the council, but the council may under the Diseases of Animals Act, 1894, appoint committees consisting partly of persons not members of the council.

(3.) Provided that the county council shall not under this section delegate any power of raising money by rate or loan. Sect. 28 (3)

As to the rates to be made by the county council, see s. 3 (i.), *ante*.
As to borrowing by county councils, see s. 69, *post*.

29. If any question arises, or is about to arise, as to whether any business, power, duty, or liability is or is not transferred to any county council or joint committee under this Act, that question, without prejudice to any other mode of trying it, may, on the application of a chairman of quarter sessions, or of the county council, committee, or other local authority concerned, be submitted for decision to the High Court of Justice in such summary manner as, subject to any rules of court, may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question. Summary proceeding for determination of questions as to transfer of powers.

As to joint committees, see ss. 46, 81, 82, *post*.

The local authority here referred to is probably the local authority whose powers and duties are alleged to be or not to be transferred to the county council.

This is a useful provision, and has been put in operation in a considerable number of cases where questions have arisen as to the respective liabilities of county councils and other authorities. By a rule of the High Court dated August 10th, 1892, which came into operation on October 1st of that year, the procedure is by special case to be agreed on by the parties, or in default of such agreement to be settled by an arbitrator agreed on by the parties or (if necessary) appointed by a judge at chambers, or to be settled by a judge at chambers. The special case when settled is to be filed at the Crown Office Department at the Central Office of the Supreme Court, by the chairman of quarter sessions, the county council, or the local authority concerned, within eight days from the settlement thereof, and is to be put into the Crown Paper for argument as if it were a case stated by justices under 20 & 21 Vict. c. 43. Without attempting to give an exhaustive list of the reported cases decided under this section, the following may be mentioned:—*Ex parte Somerset County Council*, 58 L. J. Q. B. 513; 61 L. T. (N.S.) 512; 54 J. P. 182; 5 T. L. R. 712; *Ex parte Staffordshire Quarter Sessions*, 54 J. P. 72; 6 T. L. R. 45; *Ex parte West Riding County Council*, 54 J. P. 533; 6 T. L. R. 265; *Warminster Local Board* v. *Wilts County Council*, 25 Q. B. D. 450; 59 L. J. Q. B. 434; 62 L. T. (N.S.) 902; 38 W. R. 671; 54 J. P. 375; *Re Cardigan County Council*, 54 J. P. 468; *Re Staffordshire and Derbyshire County Councils*, 54 J. P. 566; *Ex parte Kent County Council and Dover*, [1891] 1 Q. B. 389; 60 L. J. Q. B. 314; 60 L. T. (N.S.) 421; 55 J. P. 248; 7 T. L. R. 250: *Ex parte Leicestershire County Council*, [1891] 1 Q. B. 53; 60 L. J. M. C. 45; 64 L. T. (N.S.) 25; 39 W.R. 160; 55 J. P. 87; 7 T. L. R. 61; *Re Salop County Council*, 65 L. T. (N.S.) 416; 56 J. P. 213; *Montgomeryshire County Council* v. *Pryce-Jones*, 57 J. P. 308; *Marlborough Town Council* v. *Wilts County Council*, 58 J. P. 213; *Cornwall County Council* v. *Truro Town Council*, 63 L. J. M. C. 60; 70 L. T. (N.S.) 354; 58 J. P. 299; 10 R. 595; *In re Bedford Urban Sanitary Authority* [1894] 2 Q. B. 786; 64 L. J. Q. B. 26; 71 L. T. (N.S.) 433; 58 J. P. 786; *Norfolk County Council* v. *Bittering Highway Surveyor*, 58 J. P. 497: *Notts County Council* v. *Manchester, Sheffield, etc. Rail. Co.*, 71 L. T. (N.S.) 430

Sect. 29. NOTE. *Herefordshire County Council* v. *Leominster Town Council*, [1895] 1 Q. B. 43; 64 L. J. M. C. 26; 71 L. T. (N.S.) 576; 59 J. P. 38. But the court will not under the above section answer abstract questions on the construction of the Act. *Re Cardigan County Council*, *supra*.

Standing joint committee of quarter sessions and county council for the purpose of police, clerk of the peace, officers, etc.

30.—(1.) For the purposes of the police, and the clerk of the peace, and of the clerks of the justices, and joint officers, and of matters required to be determined jointly by the quarter sessions and the council of a county, there shall be a standing joint committee of the quarter sessions and the county council, consisting of such equal number of justices appointed by the quarter sessions and of members of the county council appointed by that council as may from time to time be arranged between the quarter sessions and the council, and in default of arrangement such number taken equally from the quarter sessions and the council as may be directed by a Secretary of State.

As to the appointment of the standing joint committee and their tenure of office, see s. 81, *post*. A committee may be appointed under that section for two or more counties or county boroughs. The proceedings of the committee will be regulated by s. 82, *post*.

The control of the county police is transferred to the standing joint committee by s. 9, *ante*.

Clerks of the peace will in future be appointed by this committee under s. 83, *post*.

This committee will fix and pay the salaries of justices' clerks under s. 84, *post*.

As to joint officers, see s. 118, *post*.

The committee will consist of an equal number of justices and members of the county council. If the number cannot be agreed upon it is to be determined by the Secretary of State.

(2.) The joint committee shall elect a chairman, and, in the case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot.

There will be no casting vote in the election of the chairman. But it seems to follow from ss. 81, 82, *post*, that the chairman, when elected, will have a casting vote.

(3.) Any matter arising under this Act with respect to the police, or to the clerk of the peace, or to clerks of the justices, or to officers who serve both the quarter sessions or justices and the county council, or to the provision of accommodation for the quarter sessions or justices out of session or to the use by them or the police or the said clerks of any buildings, rooms, or premises, or to the application of the Local Stamp Act, 1869, to any sums received by clerks to justices, or with respect to anything incidental to the above-mentioned matters, and any other matter requiring to be

32 & 33 Vict. c. 49.

determined jointly by the quarter sessions and county council, shall be referred to and determined by the joint committee under this section; and all such expenditure as the said joint committee determine to be required for the purposes of the matters above in this section mentioned shall be paid out of the county fund, and the council of the county shall provide for such payment accordingly. Sect. 30 (3).

As to the police, clerk of the peace, justices' clerk, and joint officers, see the sections of this Act referred to in note to sub-section (1), *ante*.

The Acts under which shire and county halls, assize courts, and judges' lodgings are provided and maintained are 7 Geo. 4, c. 63; 7 Will. 4 & 1 Vict. c. 24; 2 & 3 Vict. c. 69; and 10 & 11 Vict. c. 28. Buildings for petty sessions are provided under 12 & 13 Vict. c. 18, ss. 2, 3; 31 & 32 Vict. c. 22; and 42 & 43 Vict. c. 49, ss. 20, 30.

The County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 179, provides that in every town or place where there is a court-house or other public building belonging to a county, it may be used for the holding of the county court without charge save for lighting, warming, and cleaning, but so, however, as not to interfere with the ordinary use of the building.

See also s. 54, *post*, as to the providing of accommodation for quarter sessions and justices.

As between the county council on the one hand and the standing joint committee on the other, the latter has exclusive control of buildings and premises within the purview of the above sub-section for the accommodation of quarter sessions or justices out of sessions, or for the use of the police or clerks to justices. All questions as to the maintenance, repair, alteration, or improvement of such buildings and premises are to be determined by the standing joint committee. The county council has no power to place its veto upon the requirements of the committee under this sub-section: it is the duty of the county council to raise and pay such sums as the committee shall in their discretion deem it necessary to expend in and about such buildings and premises. *Ex parte Somerset County Council*, 58 L. J. Q. B. 513; 61 L. T. (N.S.) 512; 54 J. P. 183; 5 T. L. R. 712.

As to the Local Stamp Act, 1869, see the note to s. 3 (xiii.), *ante*, p. 13.

The fees and costs payable to justices' clerks are to be paid into the county fund, and the standing joint committee take the place of the quarter sessions and local authority in the enactments relating to the salaries and fees of justices' clerks. See s. 84, *post*.

As to the county fund, see s. 68, *post*.

PART II.

APPLICATION OF ACT TO BOROUGHS, THE METROPOLIS, AND CERTAIN SPECIAL COUNTIES.

Application of Act to Boroughs.

31. Each of the boroughs named in the Third Schedule to this Act being a borough which on the first day of June, one thousand eight hundred and eighty-eight, either had a population of not less Certain large boroughs named in the schedule to

Sect. 31.

be county boroughs.

than fifty thousand, or was a county of itself shall, from and after the appointed day, be for the purposes of this Act an administrative county of itself, and is in this Act referred to as a county borough.

Provided that for all other purposes a county borough shall continue to be part of the county (if any) in which it is situate at the passing of this Act, and if a separate commission of assize, oyer and terminer, or gaol delivery is not directed to be executed within the borough, the borough shall, for the purposes of any such commission, and of the service of jurors, and the making of jury lists, be part of the county in which it is specified in the said schedule to be deemed for the purposes of this Act to be situate.

See the third schedule, *post*. In addition to the boroughs mentioned in this schedule, other county boroughs have been created under the provisions of s. 54 (1) (*d*), *post*, viz. : Grimsby, Oxford, and Newport (Mon.).

As to the appointed day, see s. 109, *post*.

For the definition of the phrase "administrative county," see s. 100, *post*.

"The purposes of this Act" as applied to county boroughs appear from s. 34, *post*.

The principal Acts relating to the service of jurors and the jury lists are 6 Geo. 4, c. 50 ; 25 & 26 Vict. c. 107 ; 33 & 34 Vict. c. 77.

Adjustment of financial relations between counties and county boroughs.

32.—(1.) An equitable adjustment respecting the distribution of the proceeds of the local taxation licences, and probate duty grant, and respecting all other financial relations, if any, between each county, and each county borough specified in the said schedule as being deemed for the purposes of this Act to be situate in that county, shall be made by agreement, within twelve months after the appointed day, between the councils of each county and each borough, and in default of any such agreement, by the Commissioners appointed under this Act ; and such adjustment shall provide, in the case of any expenses which may in future be incurred by the county wholly or partly on behalf of the borough for the liability of such borough to contribute, and save as provided by this Act, any existing liability to contribute or to incur expense shall, after the appointed day, cease, and an equitable provision for such cessation shall be made in the adjustment.

By s. 33, *post*, county boroughs are entitled to receive a share from the local taxation account like other administrative counties. But as the amounts payable are to depend to some extent (see s. 22, *ante*) upon the grants made to each county before the county boroughs were separated from it, this section provides for an equitable adjustment of the share of each county between that county, exclusive of the county boroughs within it, and the county boroughs.

The Commissioners appointed under s. 61, *post*, made this adjustment, and their report stating the principles on which the adjustment provided is set out, *post*.

(2.) Where a county borough is specified in the said schedule as being deemed for the purposes of this Act to be situate in more than one county, the necessary adjustment shall be made between the counties.

(3.) In such adjustment regard shall be had to the existing property, debts, and liabilities (if any) connected with the financial relations of the county and borough, and to the consideration that the county is not to be placed in any worse financial position by reason of the boroughs therein being constituted county boroughs, and that a county borough is not to be placed in a worse financial position than it would have been if it had remained part of the county and had shared in the division of the sums received by a county in respect of the licence duties and the probate duty grant, as provided by this Act, and to the amount of benefit and value of the services which the borough receives in return for existing contributions, if any, and to all the circumstances of each case which it appears equitable to consider, subject nevertheless to the following provisions :—

(*a.*) Where separate commissions of assize, oyer and terminer, and gaol delivery are not directed to be executed in a county borough, the borough council shall contribute a proper share of the costs of and incidental to the assizes of the county :

(*b.*) If the borough is not at the passing of this Act a quarter sessions borough, the borough council shall contribute a proper share of the costs of and incidental to the quarter sessions and petty sessions of the county, and of and incidental to the coroners of the county or any franchise therein, and if a grant of a court of quarter sessions is hereafter made to the borough, the borough shall redeem the liability to such contribution, on such terms as may be agreed upon, or, in default of agreement, may be determined by arbitration under this Act :

* * * * *

(*d.*) Each county borough shall be liable for the maintenance of pauper lunatics in like manner as any other county.

The report of the Commissioners relating to equitable adjustments under this sub-section is set out, *post.*

Where a local Act created a stipendiary justice's district and enabled the quarter sessions to levy rates on that district in the same manner as county rates, it was held that after the passing of this Act, which created two county boroughs within the district, that the power to levy rates was transferred to the county council as to that part of the district not within either of the

Sect. 32 (3) boroughs, and that the liability of the county boroughs should be redeemed by adjustment under this section. *Ex parte Staffordshire*, 54 J. P. 72; 6 T. L. R. 45.

NOTE. The expression "costs of assizes" is defined by s. 100, *post*. The same section provides that the term "assizes" shall include the Central Criminal Court.

If the borough is not a quarter sessions borough it will, for the purpose of the appointment and jurisdiction of the coroner, form part of the county, subject, however, to the provisions of s. 34, sub-ss. (4), (5), *post*.

Arbitration under the Act is regulated by s. 62, *post*, which also provides for the method by which a liability is to be redeemed.

Clause (*c*) of this sub-section is wholly repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5), and re-enacted substantially by s. 244 of that Act. That section contains provisions for cases where a county borough has contributed to the cost of a county asylum: substantially it provides for a continuance of the existing state of things, but it enables the councils concerned to make a new arrangement, and to adjust property, debts, and liabilities; if one council refuses to make a new arrangement, the matter must be referred to arbitration under this Act.

The county boroughs will be liable for the maintenance of pauper lunatics adjudged chargeable to them under 53 & 54 Vict. c. 5, s. 290, as to which see the note to s. 24, sub-s. (2) (*g*), *ante*, p. 56.

(4.) In the adjustment of any financial relations other than the distribution of the proceeds of the licences and probate duty grant, no borough wholly or partially exempt from contributing to any object shall be rendered liable so to contribute or to contribute in greater proportion than at present.

This sub-section has reference only to such contributions as are to continue under the preceding sub-section. All other liabilities are, by sub-s. (1), to cease.

(5.) The provisions of Part III. of this Act, with respect to the adjustment of property, income, debts, liabilities, and expenses, and to borrowing for the purpose, shall apply as if the Commissioners under this Act were the arbitrator in that Part mentioned.

This has the effect of applying to the Commissioners the powers of an arbitrator under s. 62, *post*.

(6.) Provided that at any time after the end of five years from the date of an agreement or award adjusting the financial relations of any county and borough, if the council of either the county or borough satisfy the Local Government Board that the adjustment has become inequitable, and that the councils are unable to agree on a new adjustment, the board shall appoint an arbitrator; and such arbitrator shall proceed to make a new equitable adjustment as if he were the Commissioners under this Act, and the provisions of this Act shall apply accordingly. Any new adjustment made by agreement, or by the award of an arbitrator under this section, may, after the expiration of five years from the date of such

agreement or award, be altered either by agreement or by arbitration as above-mentioned. Sect. 32 (6).

As to the powers of the arbitrator appointed under the sub-section, see s. 62, *post*. The councils may agree on a new adjustment without appointing an arbitrator.

(7.) Until the adjustment in pursuance of this section has come into operation, the county or borough council shall pay out of the county or borough fund to the borough or county council, as the case may be, the average annual amount which, during the three years next before the appointed day, has been expended by the county for the benefit of the borough, or contributed by the borough to the county, as the case may be, but any sum so paid shall be taken into account in the making of the adjustment, and the adjustment shall be made so as to take effect as from the appointed day.

This provision was temporary only : for an illustration of its operation, see *Ex parte Staffordshire*, cited in the note to sub-s. (3) of this section.

(8.) Any contribution by a county borough to the county in pursuance of this section shall be required and made in accordance with section one hundred and fifty-three of the Municipal Corporations Act, 1882, and that section, except so far as relates to the appointment of an arbitrator, shall apply in like manner as if every such borough were a quarter sessions borough situate in the county.

Section 153 of the Municipal Corporations Act, 1882, omitting sub-s. (4), which relates to the appointment of an arbitrator, is as follows :—

"(1.) The treasurer of each county shall, not more than twice in every year, send to the council of each borough situate in the county, and having a separate court of quarter sessions, an account showing separately—

(*a.*) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county ; and

(*b.*) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for general county purposes, and all sums received in aid or on account of the county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received ;

and shall make an order on the council for the payment of the sum appearing by this account to be due from the municipal corporation of the borough.

"(2.) The council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund.

"(3.) If the order is not complied with, two justices for the county may, on the complaint of the treasurer of the county, made within one month after the issue of the order, issue and send to the treasurer of the borough a warrant requiring him to pay to the treasurer of the county, besides the sum mentioned in the order, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned

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in the order ; and until payment thereof the treasurer of the county shall have, in respect of the warrant, all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges."

(9.) Expressions in this section relating to contributions by a borough to a county shall be construed to include any sum raised by the assessment of the parishes or hereditaments in the borough to the county rate.

Provisions as to police and rateable value in county boroughs.

33.—(1.) Nothing in this Act with respect to county boroughs shall prevent the continuance of one police force for any county borough and any county, or the consolidation of the police forces of any county borough and any county in like manner as heretofore, but where the provisions of this Act affect the arrangement with respect to the consolidated police force for a county and borough, an adjustment shall be made between the council of the borough and county in accordance with the provisions of this Act. The foregoing provisions of this section shall apply to boroughs which are not county boroughs in like manner as if they were re-enacted and in terms made applicable to those boroughs.

The 3 & 4 Vict. c. 88, s. 14, enables boroughs to agree to consolidate their police with the county police, and by 19 & 20 Vict. c. 69, s. 5, the Queen in Council may arrange terms of consolidation on representations made by boroughs. The chief constable of the county has the general disposition and government of the consolidated police. An agreement for the consolidation of county and borough police cannot be terminated without the sanction of a Secretary of State; 19 & 20 Vict. c. 69, s. 20. As to the superannuation of the consolidated police, see the Police Act, 1890 (53 & 54 Vict. c. 45), s. 19 (3), *post*.

The provisions of the Act may affect an arrangement between a county and borough with reference to the sums to be contributed by each to the cost of the police under s. 24, sub-s. (2) (*i.*).

As to adjustment, see s. 62, *post*.

(2.) Where, for the purpose of calculating any contribution or payment to be made under this Act, it is necessary to ascertain the rateable value of both a county and a county borough, such rateable value shall be ascertained and fixed by a joint committee composed of representatives of all the councils concerned, and such committee shall for that purpose, have all the powers and jurisdiction of quarter sessions and of a committee of justices appointed under the County Rate Act, 1852, and the Acts amending the same, and the number of representatives for the county and each county borough respectively shall be settled by agreement, or, in default of agreement, by the Local Government Board.

15 & 16 Vict. c. 81.

Contributions and payments will have to be calculated under the preceding section and under s. 62, *post*. The rateable value will be determined by a joint committee, who will have the same power as a committee have under

15 & 16 Vict. c. 81, for the purpose of preparing a standard or basis for the county rate, see s. 3 (i.), *ante*, p. 5. It will be necessary, in fact, to prepare such standard or basis specially for the purposes of this sub-section.

Sect. 33 (2). NOTE.

Application of Act with modifications to county boroughs.

34.—(1.) The mayor, aldermen, and burgesses of each county borough acting by the council shall, subject as in this Act mentioned, have and be subject to all the powers, duties, and liabilities of a county council under this Act (in so far as they are not already in possession of or subject to the same), and in particular shall, subject to the provisions of this Act as to adjustment between counties and county boroughs, be entitled to receive the like sums out of the Local Taxation Account, and be bound to make the like payments in substitution for local grants and the like grants in respect of the costs of the officers of unions and of district schools as in the case of a county council, so far as the circumstances make such payments applicable, and all the provisions of this Act (including those with respect to the forfeiture on the withholding by a Secretary of State of his certificate as respects the police of the county) shall accordingly, so far as circumstances admit, apply in the case of every such borough, with the necessary modifications, and in particular with the following modifications:—

(*a.*) The county borough shall be substituted for the county, and borough fund shall be substituted for county fund, and town clerk shall be substituted for clerk of the peace and clerk of the council:

(*b.*) A reference to two or more counties shall include a reference to county boroughs as well as counties:

(*c.*) Such powers, duties, and liabilities of the court of quarter sessions or justices as in the case of a county are transferred to the county council shall be transferred to the council of the county borough, whether the same are vested in or attached to the court of quarter sessions or justices of the borough or of the county in which the borough is situate:

(*d.*) In the case of the duties collected by the Commissioners of Inland Revenue in respect of the licences for trade carts, locomotives, horses, mules, and horse dealers under any Act of the present session, those Commissioners shall certify the amount collected in each county in like manner as if the county included each county borough specified in the Third Schedule to this Act as deemed to be situate in that county, and the amount as so ascertained shall be divided between the said boroughs and the residue of the said county in proportion to rateable value as fixed by the joint committee in pursuance of this Act, and until such value is fixed in proportion to

Sect. 34 (1)

rateable value according to the standard or basis for county contributions for the time being, and the share so ascertained shall be paid in like manner as if it had been collected in the county borough or in the residue of the county, as the case may be :

(*e.*) Any sum standing to the Exchequer Contribution Account of a county borough which remains after payment of the grant required to be made in respect of the costs of union officers shall be carried to the borough fund, or be applied in aid of such rate leviable over the whole of the borough as the council may determine, and the provisions respecting the payment of the same to the general county account of the county fund, and the subsequent application and division thereof, shall not apply.

In many cases the business formerly administered by justices in or out of sessions, and transferred to county councils by this Act, was already administered by the council of a borough as local authority. In such cases no transfer was necessary under this Act.

The provisions as to adjustment are contained in s. 32, *ante*.

The sums to be received out of the Local Taxation Account are described in ss. 20—22. The payments in substitution for local grants, etc., are contained in ss. 24—26.

A forfeiture of the police grant is provided for by s. 25, *ante*.

A reference to two or more counties is contained in s. 24, sub-s. (5), and s. 26, sub-s. (1).

The council of the borough, as county council, will have transferred to them all powers and duties, transferred by Part I. of this Act, whether these have been exercised hitherto by the county or borough quarter sessions, or the county or borough justices.

The Act referred to in paragraph (*d*) was never passed.

The Locomotives on Highways Act, 1896, *post* (59 & 60 Vict. c. 36), s. 8, does, however, provide for the payment of excise and licence duties on light locomotives, and these duties are to be dealt with in manner directed by this Act with respect to duties on Local Taxation Licences, *i.e.*, under s. 20, *ante*, p. 46.

Paragraph (*e*) substitutes, so far as relates to county boroughs, a provision in lieu of s. 23, sub-s. (2) (iv.), *ante*, p. 50. The surplus is to be paid to the borough fund, or in aid of some rate leviable over the whole of the borough.

(2.) On the appointed day there shall be transferred to the mayor, aldermen, and burgesses of each county borough all such bridges and approaches thereto, or parts thereof, situate within the borough as were previously repairable by the county or any hundred therein, and the costs of the council in repairing such bridges and approaches, or parts thereof, and in repairing any roads in the borough which by virtue of this Act or any Act applied by this Act are main roads, shall be payable out of the borough fund.

This sub-section transfers to a county borough the liability to repair all

bridges within its boundaries which were previously repairable as county or hundred bridges. As to county bridges, see the note to s. 3 (viii.), p. 9, *ante*. **Sect. 34 (2)**

NOTE.

As to the liability of a borough to repair bridges within the borough other than those repairable by the county, see the Municipal Corporations Act, 1882, s. 119 ; also *R.* v. *Dorset* (*Inhabitants of*), 45 L. T. (N.S.) 308 ; *R.* v. *Southampton*, (No. 1), 17 Q. B. D. 424 ; 55 L. J. M. C. 158 ; 55 L. T. (N.S.) 322 ; 35 W. R. 10 ; 50 J. P. 773 ; *R.* v. *Southampton*, (No. 2), 19 Q. B. D. 590 ; 56 L. J. M. C. 112 ; 57 L. T. (N.S.) 261.

(3.) The provisions of this Act with respect to—

(*a.*) The constitution, election, proceedings, or position of the county council or the chairman thereof,

(*b.*) The county treasurer, county surveyor, and other county officers,

(*c.*) The standing joint committee of the justices and the council, or

(*d.*) Coroners, or

(*e.*) Gas meters, or

(*f.*) The transfer to the council of powers relating to county and other rates, and the preparation or revision of the basis or standard for the county rate ;

shall not apply to county boroughs, nor shall Part IV. of this Act relating to finance apply, save so far as is expressly provided in that Part.

The constitution, etc., of the council is provided for by the Municipal Corporations Act, 1882, the borough council in a county borough being also the county council.

The provisions of this Act as to county officers are inapplicable for the like reason, the appointment and duties of the borough officers being regulated by the Municipal Corporations Act, 1882.

The purposes for which a standing joint committee are appointed are in a borough administered by the borough council as such, or by the watch committee.

In a borough which has a separate quarter sessions the coroner is appointed by the council under the Municipal Corporations Act, 1882, s. 171. In other boroughs the county coroner has jurisdiction, but the election of a coroner in a county borough which has not separate quarter sessions is specially provided for by sub-s. (4) and (5), *post*. Section 5 of this Act is therefore inapplicable to county boroughs.

The Acts relating to gas meters (as to which, see note to s. 3 (xiii.), *ante*, p. 13) are in boroughs administered by the town councils, if they have adopted the Acts ; but if they have not adopted the Acts, or if they are manufacturers or sellers of gas, the powers and duties under the Acts are exercised by the borough justices. If these powers and duties are not at present vested in the borough councils they are to remain in the borough justices.

As to the county and other rates, see s. 3 (i.), *ante*, p. 5 ; there cannot of course be county rates in a county borough.

(4.) Provided that where the district of any county coroner is wholly situate within a county borough, the coroner for that district shall be appointed by the council of that borough, and the

Sect. 34 (4). writ for his election may be issued to that council instead of to the county council, and where the district of any county coroner is situate partly within and partly without a county borough, the writ for the election of such coroner shall be issued to the county council, but if there is a joint committee of the county and borough councils for the purpose, the question of the person to be elected shall be referred to that joint committee, and the county council shall appoint the person recommended by the majority of such committee.

This sub-section provides for the case where a county borough has not separate quarter sessions and has not, therefore, a coroner of its own under s. 171 of the Municipal Corporations Act, 1882. Where the district assigned to a county coroner is wholly within the borough, the writ, instead of being directed to the county council, under s. 5, sub-s. (1), *ante*, is to be directed to the borough council. When it is partly within the borough the writ is to be directed to the county council, who are to appoint the person recommended by a joint committee appointed under the next sub-section.

(5.) If the council of a county borough so require, a joint committee shall from time to time be appointed for the purposes of coroners, consisting of such number of members of the county and borough councils as may be agreed upon, or in default of agreement may be determined by a Secretary of State.

See the note to the preceding sub-section.

(6.) Nothing in this Act shall transfer to the council of any borough any power in relation to the division of the county into polling districts for the purpose of a parliamentary election for the county, the appointment of places of election for the county, the places of holding courts for the revision of the list of voters, and the costs of, and other matters to be done for, the registration of parliamentary voters for the county.

For purposes of county elections, etc., the powers above referred to are exercisable by county councils in succession to quarter sessions under s. 3 (xii.) *ante*, p. 11.

The same powers as to dividing a municipal borough for purposes of borough elections are vested in the borough council by 30 & 31 Vict. c. 102, s. 34 ; 31 & 32 Vict. c. 58, s. 18 ; 46 & 47 Vict. c. 51, s. 47, sub-s. (3).

(7.) The powers and duties of the county authority under the Allotments Act, 1887, shall, as respects the borough, continue to be exercised and performed by the Local Government Board.

50 & 51 Vict. c. 48.

It is provided by the Allotments Act, 1887 (50 & 51 Vict. c. 48), s. 16, that for the purposes of that Act the county authority should be any representative body elected by the inhabitants of the county which might be established

under any future Act, and until such representative body should be established the powers and duties of the county authority should be exercised and performed by the Local Government Board. The county councils, therefore, are the county authorities under the Act, but this will not apply to county boroughs, in which the Local Government Board will continue to exercise jurisdiction as county authority. Sect. 34 (7). NOTE.

It may be added that in applying s. 9 of the Local Government Act, 1894, to county boroughs, sub-s. (18) of that section provides that an order for compulsory purchase of land for allotments shall, in the case of a county borough, be both made and confirmed by the Local Government Board.

(8.) This Act and the Municipal Corporations Act, 1882, shall be construed so as to give effect to the provisions of this section. 45 & 46 Vict. c. 50.

The provisions of the Municipal Corporations Act, 1882, bearing on this section have been noticed in the notes.

35. In the case of a quarter sessions borough, not being one of the boroughs named in the Third Schedule to this Act, but containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, the following provisions shall, on and after the appointed day, apply : Application of Act to larger quarter sessions boroughs, not county counties.

(1.) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act, or (save as in this Act expressly mentioned) alter the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882, but subject to the above provisions and to the savings hereinafter contained, the borough shall form part of the county for the purposes of this Act, and the parishes in the borough shall, subject to the exemptions hereinafter mentioned, be liable to be assessed to county contributions in like manner as the rest of the county.

It has already been pointed out in the note to s. 34, sub-s. (3), that in many cases where the local authorities for the execution of Acts were in counties the quarter sessions, in boroughs the local authorities under the same Acts were the borough councils. In these cases, while the powers of the quarter sessions are transferred to the county councils by this Act, the councils of the larger boroughs to which this section relates will, under the provision in the text, retain their powers as local authorities. These will include powers under the Explosives Act, 1875 ; the Weights and Measures Act, 1878 to 1893 ; the Petroleum Acts, 1871 to 1881, and the Reformatory and Industrial Schools Acts.

In so far as the powers of the councils under the Municipal Corporations Act, 1882, are altered by this Act, the alterations are indicated in the notes to the incorporated sections of that Act, *post*. Subject, however, to the provisions of this section, the boroughs in question are, for the purposes of this Act, to form part of the county.

(2.) Where such borough is at the passing of this Act exempt, in whole or in part, from contributing towards costs

Sect. 35 (2).

incurred for any purpose for which the quarter sessions of the county in which the borough is situate are authorised to incur cost the parishes in the borough shall not, save as in this Act expressly mentioned, be assessed by the county council to county contributions in respect of costs incurred for any such purpose, nor in the case of a partial exemption, be so assessed for any larger sum than such as will give effect to that exemption, but this exemption shall not extend to any costs incurred for the purpose of any powers, duties, or liabilities of the justices of the borough, which will by virtue of this Act be exercised or discharged by the county council nor to any costs of or incidental to the assizes of the county.

This sub-section preserves existing exemptions from contributions to the county rate. The exemption extends to contributions to the costs of new county bridges taken over by a county council under s. 6, *ante*, p. 17. *Bury St. Edmunds (Mayor, etc. of)* v. *West Suffolk County Council*, Times, May 21st, 1898.

The powers, duties, and liabilities of the justices of the borough which are by this Act transferred to the county council are those transferred by s. 36, *post*.

As to the costs of the assizes, see sub-s. (5), and s. 100, *post*.

As to the mode of assessment, see s. 100, *post*.

(3.) Notwithstanding the last enactment the borough shall, for the purposes of the provisions of the Highways and Locomotives (Amendment) Act, 1878, respecting main roads, form part of the county, and the costs of maintaining, repairing, improving, enlarging, or otherwise dealing with any main road in the borough shall be paid out of the county fund, and the payment of the costs incurred in the execution of the provisions of this Act with respect to main roads shall be a general county purpose for which the parishes of the borough may be assessed to county contributions :

41 & 42 Vict c. 77.

A borough having separate quarter sessions was not included in the definition of an urban authority under the Highway Act, 1878, and therefore the provisions of that Act as to main roads did not apply to such a borough. The boroughs mentioned in this section are now declared to be within the definition of urban sanitary authorities (see the next sub-section), and for the purposes of main roads they are to be deemed to be part of the county, and liable to be assessed like the rest of the county to county contributions.

For the definition of general county purposes, see s. 68, *post*.

(4.) Provided that—

(*a*.) The borough shall be deemed to be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878 ; and the council of the borough shall

41 & 42 Vict. c. 77.

have the power under the Highways and Locomotives (Amendment) Act, 1878, of making bye-laws respecting locomotives, and authorizing locomotives to be used on any road within the borough, save that if any difference is made by such bye-laws or authority between any main road maintained by the county council and the other roads in the borough, such authority and bye-laws shall require the approval of the county council; and

(*b.*) The council of the borough shall have power as an urban authority to claim, in accordance with this Act, to retain the powers and duties of maintaining and repairing any main road in the borough; and

(*c.*) The council of the borough may within two years after the passing of this Act apply to the county council to declare such roads in the borough as are mentioned in the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application and inquire whether such roads are or ought to be main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse to make the declaration, the council of the borough may within a reasonable time after such refusal apply to the Local Government Board, and that Board shall have power, if after a local inquiry they think it just so to do, to make the said declaration, which shall have the same effect as if made by the county council.

See the note to the preceding sub-section.

The power to make bye-laws respecting locomotives, and authorizing locomotives to be used on any road within the borough, is conferred by s. 31 of the Highway Act as amended by this section. The saving in case of differences between the county bye-laws applicable to main roads maintained by the county council within the borough and the borough bye-laws, is obviously necessary to avoid an inconvenient or even absurd result. It is to be feared, however, that inconvenience will result from the differences in bye-laws of the county council and those of the borough council, when by reason of the borough itself maintaining its main roads the approval of the county council is not necessary.

It should be mentioned that these bye-laws as to locomotives will not apply to "light locomotives" as defined by the Locomotives on Highways Act, 1896. See s. 1 of that Act, *post.*

Sect. 35 (4).

NOTE.

The power of an urban authority to claim to retain the maintenance of its main roads is conferred by s. 11, sub-s. (2), *ante*, p. 27.

As already stated, the provisions of the Act of 1878 as to main roads did not previously apply to these boroughs, and hence it was necessary to allow a period within which roads in the borough may be declared main roads under the Act.

(5.) The payment of the costs of assizes and sessions shall be a general county purpose for which the parishes in the borough may be assessed to county contributions, and all costs of prosecutions mentioned in section one hundred and sixty-nine of the Municipal Corporations Acts, 1882, shall be paid out of the county fund.

45 & 46 Vict. c. 50.

As to what is included in "the costs of assizes and sessions," see s. 100, *post*.

The general scheme of the Act with reference to the costs of assizes and sessions was thus stated by STEPHEN and VAUGHAN WILLIAMS, JJ., in *Ex parte The County Council of Kent and the Councils of Dover and Sandwich*, [1891] 1 Q. B. 389 ; 60 L. J. Q. B. 314 ; 60 L. T. (N.S.) 421 ; 55 J. P. 248 ; 7 T. L. R. 250 :— "Boroughs with populations over 10,000 having a separate court of quarter sessions are made part and parcel of the county, and are thus subject generally to county rates, but retain the power and duty to raise by rates the expenses of the borough quarter sessions and of petty sessional divisions within the area of the jurisdiction of the borough quarter sessions, and *pro tanto* are exempted from proportionate contribution to the expenses of county sessions. Quarter sessions boroughs with a population of less than 10,000, though retaining their judicial functions, have neither the duty nor the power to raise the expenses of sessions by rates, such expenses being a general county purpose . . . . We are not unaware that there are provisions in the Act, particularly in section 35, sub-section (5), which are difficult to reconcile with this view, but it seems to us that a construction must be put upon them consistent with the Act as a whole." It was held, therefore, in the case of Dover, which had a population exceeding 10,000, that the borough quarter sessions had still the power of making a rate in the nature of a county rate in the liberties of the borough, but that such power was limited to expenses of borough quarter sessions, that the liability for costs of quarter sessions was not transferred to the county council, and that, on the other hand, the borough was not subject to county rates in respect of the costs of county quarter sessions. It was held further that the salaries of the recorder and justices' clerk were payable as formerly out of the borough fund into which the fees and fines were paid, and that the costs for prosecution for indictable offences incurred in the borough were payable by the county council, as the text repealed s. 169 of the Municipal Corporations Act, 1882, and made those costs payable out of the county funds. In the case of Sandwich, which depended upon s. 38 (5), *post* (that borough having a population of less than 10,000), it was held that for all such purposes the borough was part of the county and liable to be assessed accordingly, and that the costs of the borough quarter sessions, salaries of recorder, etc., were payable by the county council. But in *Thetford (Mayor of)* v. *Norfolk County Council*, 14 T. L. R. 35, WILLS, J., differed from the latter part of this decision, and held that in the case of a smaller quarter sessions borough the salaries of the recorder and clerk of the peace are payable by the borough, that of the justices' clerk being payable by the county under s. 84, *post*.

Section 169 of the Municipal Corporations Act, 1882, is as follows :—"A

municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of any other offence committed or supposed to have been committed in the borough, and costs and expenses attending the prosecution whereof are by law payable as in the case of a felony. The amount of those costs and expenses shall be ascertained as directed by law, and the order of the court for the payment thereof shall be directed to the treasurer of the borough."

Sect. 35 (5) NOTE

As to the offences to which this section applies, see the notes to s. 67, *post.*

(6.) The county councillors elected for an electoral division consisting wholly of such borough, or of some part of such borough, shall not act or vote in respect of any question arising before the county council as regards matters involving expenditure on account of which the parishes in the borough are not, for the time being, liable to be assessed equally with the rest of the county to county contributions.

The councillors hereby disqualified from voting are those who represent a division consisting wholly of the borough, or wholly of part of the borough. The sub-section will not apply to councillors who represent a division consisting partly of the borough and partly of a county district exterior to the borough.

(7.) The county council and the council of any such borough may agree for the cessation in whole or in part of any exemption under this section of the parishes in the borough from assessment to county contributions, in consideration either of payment by the county council of a capital sum, or of an annual payment, or of a transfer of property or liabilities, or of the county council undertaking in substitution for the council of the borough any powers or duties, or partly for one consideration and partly for another, or in any other manner, according as may be determined.

The consideration for the agreement may be all or any of the matters herein stated, or any other consideration which the councils in their discretion may deem adequate. On the cessation of the exemption the parishes in the borough will become liable to be assessed to county contributions in respect of the costs incurred for the purposes, from contributing to which they were previously exempt.

(8.) A borough which is a county of a city or a county of a town shall, for the purposes of this section, be deemed to be situate in and form part of the county which it adjoins, or if it adjoins more than one county, then in and of the county of which it forms part for the purposes of parliamentary elections.

A borough which is not a county of a city or county of a town will, of

Sect. 35 (8). course, for the purposes of this section be deemed to form part of the county in which it is geographically situate.

Note.

General application of Act to boroughs with separate commission of the peace.

36.—(1.) Where a borough has a separate commission of the peace, whether a quarter sessions borough or not (and is not a borough named in the Third Schedule to this Act), then, subject to the provisions of this Act, all such powers, duties, and liabilities of the court of quarter sessions or justices of the borough, as in the case of the county are by this Act transferred to the county council, shall cease, and the county council shall have those powers, duties, and liabilities within the area of the borough in like manner as in the rest of the county;

This section applies to all boroughs which have a separate commission of the peace, other than county boroughs, whether they have separate quarter sessions or not, and without regard to their population.

This section provides that such powers of the borough quarter sessions or justices as would, in a county, be transferred to the county council, shall in these boroughs be transferred to the county councils, so that for these purposes the county council will supersede the borough sessions or justices within the area of the borough. As to the costs incurred for these purposes, see s. 35, sub-s. (2), *ante*, p. 77.

(2.) Provided that such powers, duties, or liabilities, so far as they are under the Acts relating to pauper lunatics, shall, save as otherwise provided by this Act, be transferred to the council of the borough and not to the county council, and the provisions of this Act with respect to the transfer to a county council shall apply with the necessary modifications to such transfer to the council of the borough.

This sub-section contains an exception to the preceding one. The transfer of the powers of the borough sessions or justices under the Acts relating to pauper lunatics is to the borough council, not to the county council.

This Act contained a clause (s. 86, *post*) adapting the Acts relating to lunatic asylums to the provisions of this Act: that clause has been repealed (but is in substance re-enacted) by the Lunacy Act, 1890.

Observe that this clause relates only to *pauper* lunatics. This Act does not in any way interfere with the powers and duties of justices in relation to private lunatic asylums.

The expression "save as otherwise provided by this Act," has reference to the provisions in s. 38, sub-s. (1), *post*, whereby in the smaller quarter sessions boroughs the powers, etc., of the borough justices relating to pauper lunatic asylums are transferred to the county councils.

Application of Act to quarter sessions boroughs hereafter created.

37. The grant after the passing of this Act of a court of quarter sessions to any borough not being a county borough, shall not affect the powers, duties, or liabilities of the county council as respects the area of that borough, nor exempt the parishes in the borough from being assessed to county contributions for any

purpose to which such parishes were previously liable to be assessed, and shall not confer or impose on the mayor, aldermen, and burgesses, or the council of such borough, any powers, duties, or liabilities further than such as are necessary for establishing and maintaining the court of quarter sessions in the borough.

The effect of this section is that the grant of separate quarter sessions will not in future affect the position of a borough under this Act, so far as relates to county councils and county contributions.

In the case of a grant of quarter sessions to a county borough which had not separate quarter sessions at the passing of this Act, the borough is to redeem its liability to contribute a share of the costs of quarter sessions and coroners. See s. 32, sub-s. (3), *ante*, p. 69.

Application of Act to smaller quarter sessions boroughs with population under 10,000.

38. Where a borough having a separate court of quarter sessions contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, the following provisions shall after the appointed day apply :—

(1.) There shall be transferred to the county council the powers, duties, and liabilities of the council and justices of the borough as regards the provision, enlargement, maintenance, management, and visitation of and other dealing with asylums for pauper lunatics ;

These powers, duties, and liabilities are similar to those transferred from the quarter sessions in counties under s. 3, sub-s. (vi.), *ante*, p. 8. As to the larger quarter sessions boroughs, see s. 35 (1), *ante*, p. 77.

The justices of the county of Salop and the borough of Wenlock, in the year 1884, agreed to provide a common lunatic asylum and to bear the costs of its provision and maintenance in agreed proportions, and shortly afterwards an agreement was entered into between the justices of Montgomery and the committee of visitors appointed by Salop and Wenlock under the above arrangement whereby Montgomery became united with Salop and Wenlock for the purposes of the Lunacy Acts. A visiting committee was appointed by the two counties and the borough of Wenlock jointly. Under agreements with this visiting committee three boroughs in the county of Salop joined the union on the terms of paying certain annual rents to the treasurer of the asylum. Each of these three boroughs was a quarter sessions borough with a population of less than 10,000 when the Local Government Act, 1888, came into operation. *Held* (by CAVE and CHARLES, JJ.) on a case stated under s. 29, *ante*, that the liability of the three boroughs under their agreements with the visiting committee was transferred under this section to the county council of Salop, and that that council was bound to pay to the treasurer of the asylum the rents reserved by those agreements. *In re County Council of Salop*, 65 L. T. (N.S.) 416.

(2.) There shall be transferred to the county council the powers, duties, and liabilities of the council of the borough—

(*a*) as regards coroners ; and

(*b*) as regards the appointment of analysts under the Acts relating to the sale of food and drugs ; and

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(*c*) under the Acts relating to—
(i.) reformatory and industrial schools ; and
(ii.) fish conservancy ; and
(iii.) explosives ; and
(*d*) under the Highways and Locomotives (Amendment) Act, 1878 ;

Provided that the transfer by this section—
(*a*) shall be subject to the provisions in this Act for the protection of existing officers and the continuance of existing contracts ; and
(*b*) shall not, save as respects the coroners, affect the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882 ;

In all quarter sessions boroughs the coroner was formerly appointed by the council of the borough, under s. 171 of the Municipal Corporations Act, 1882. In the boroughs to which this section relates that council no longer has this power, and it would appear from sub-s. (5) that the offices of existing coroners were determined. The area of these boroughs has now, for the purposes of the coroners, become part of the counties. (See sub-s. (5), *post.*)

Analysts were formerly appointed in boroughs having separate courts of quarter sessions by the councils of such boroughs (38 & 39 Vict. c. 63, s. 10). This power of appointment remains with the town councils of the larger quarter sessions boroughs, under s. 35, *ante.* In the smaller quarter sessions boroughs the power passes to the county councils, subject to the proviso in this sub-section.

Under the Reformatory and Industrial Schools Acts the councils of boroughs had certain powers as prison authorities similar to those of justices in quarter sessions in counties, as to which see s. 3. sub-s. (vii.), *ante*, p. 8.

As to the Acts relating to fish conservancy, see s. 3, sub-s. (xiii.), *ante*, p. 12.

Under the Explosives Act, 1875, the local authority in a borough not assessed to the county rate were the council of the borough (s. 67), and in boroughs so assessed the council might become a local authority by order of a Secretary of State (s. 68). The powers and duties of the town councils in the smaller quarter sessions boroughs passed under the text to the county councils.

As to the Highway Act, 1878, compare the provisions of s. 35, sub-s. (4), *ante*, p. 78, and see the notes to that section. See also sub-ss. (3) and (4), *infra.*

The provisions of this Act as to existing officers and as to the continuance of existing contracts are contained in ss. 118, 120, and ss. 122, 125, *post.*

41 & 42 Vict. c. 77.

(3.) The borough shall be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878 :

See the notes to s. 35, sub-ss. (3) and (4), *ante*, pp. 78, 79.

(4.) The council of the borough may, within two years after the passing of this Act, apply to the county council to declare such roads in the borough as are mentioned in

the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application, and inquire whether such roads are, or ought to be main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse the declaration, the council of the borough may, within a reasonable time after such refusal, apply to the Local Government Board, and that Board, after a local inquiry, shall have power, if they think it just so to do, to make the said declaration, which shall have the same effect as if it had been made by the county council:

This sub-section is identical with s. 35, sub-s. (4) (*c*), *ante*, p. 79.

(5.) The area of the borough shall for the purposes of the above-mentioned Acts and all other administrative purposes of the county council be included in the county, as if the borough had not a separate court of quarter sessions, and accordingly shall be subject to the authority of the county council and the county coroners, and may be annexed by the county council to a coroner's district of the county, and the parishes in the borough shall be liable to be assessed to all county contributions:

See *Ex parte The County Council of Kent and The Councils of Dover and Sandwich*, and *Thetford (Mayor of)* v. *Norfolk County Council*, *ante*, p. 80.

See the note to sub-s. (2) as to coroners, *supra*. The borough is to be liable to be assessed to all county contributions.

(6.) Any property, debts, or liabilities of the county, or of any borough affected by this or the next succeeding section (including the charge to be made for lunatics which but for this Act would have been maintainable by the borough), may be adjusted in manner provided by Part Three of this Act:

The provisions of this Act as to adjustment are contained in s. 62, *post*.

As to lunatics maintainable by the borough, see the note to s. 24, sub-s. (2) (*g*), *ante*, p. 56. The lunatics in question are now chargeable to the county.

(7.) It shall be lawful for Her Majesty the Queen, on petition from the council of any borough to which this or the next succeeding section applies, by Order in Council, to revoke the grant of a court of quarter sessions to the borough, and by letters patent to revoke the grant of a commission of the peace for the borough, and to make

Sect. 38 (7).

such provision as to Her Majesty seems proper for the protection of interests existing at the date of the revocation, and after the date of the revocation all enactments and laws relating to courts of quarter sessions and justices and their jurisdiction shall apply as if such court of quarter sessions or commission of the peace, as the case may be, did not exist :

This is a novel provision. If it is put into effect the offices of the recorder of the borough, clerk of the peace, etc., will be abolished, but they will be entitled to compensation under s. 120, *post*.

(8.) A borough which is a county of a city or a county of a town shall, for the purposes of this and the next succeeding section, and if Her Majesty revokes the grant of a Court of quarter sessions or a commission of the peace to such borough, then also for all purposes of quarter sessions and justices, be deemed to be situate in and form part of the county of which it forms part for the purpose of parliamentary elections :

Compare the somewhat similar provisions of s. 35, sub-s. (8), *ante*, and see the notes to that sub-section. In the case of a revocation of a grant of quarter sessions to the borough, the county justices would exercise concurrent jurisdiction with the borough justices. See the Municipal Corporations Act, 1882, s. 154, and *Reigate (Mayor of)* v. *Hart*, L. R. 3 Q. B. 244 ; 37 L. J. M. C. 70 ; 18 L. T. (N.S.) 237 ; 16 W. R. 896 ; 32 J. P. 342.

(9.) Where this section applies to a cinque port it shall apply also to all the members thereof, and those members when not situate in a quarter sessions borough shall form part of the county for all purposes.

As to the cinque ports, see the note to s. 48, *post*.

Application of Act to all boroughs with population under 10,000.

39.—(1.) Where a borough, whether with or without a separate court of quarter sessions, contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, then after the appointed day all powers, duties, and liabilities of the mayor, aldermen, and burgesses, or council of the borough, or the watch committee of the borough in relation—

(*a*) to the police force of the borough, or

(*b*) to the appointment of analysts under the Acts relating to the sale of foods and drugs, or

41 & 42 Vict. c. 74. 47 & 48 Vict. cc. 13, 47.

(*c*) to the execution of the Contagious Diseases (Animals) Acts, 1878 to 1886, or the Destructive Insects Act, 1877, or

(*d*) to gas meters, or

(*e*) to weights and measures, if the council exercise any jurisdiction in relation thereto,

shall cease, and, subject to the provisions of this Act as to the members of the police force holding office on the said day, the area of the borough shall for all purposes of the Acts relating to the county police force, or other matters above in this section mentioned, form part of the county in like manner as if it were not a borough. 49 & 50 Vict. c. 32. 40 & 41 Vict. c. 68.

This section applies to all boroughs having a population of less than 10,000, whether they have separate quarter sessions or not. To these boroughs sub-ss. (6) and (8) of the preceding section are made expressly applicable.

The police force of the borough will cease to exist as a separate force, and the existing borough constables will become county constables as provided by ss. 118, 119, *post*. This provision as to police repeals that part of the Municipal Corporations Act, 1882, relating to borough police, so far as relates to these smaller boroughs.

It has been shown in the notes to the last section that analysts were appointed in quarter sessions boroughs under 38 & 39 Vict. c. 63, s. 10, by the borough councils. In boroughs which had no separate quarter sessions, but had a separate police force, those councils had a similar power of appointment. As the separate police force will cease to exist in these smaller boroughs, the power to appoint analysts is to cease also.

The Contagious Diseases (Animals) Acts referred to in the text (except the two sections mentioned in sub-s. (2), *infra*), have been repealed and consolidated by the Diseases of Animals Act, 1894. By s. 3 of that Act, the local authorities in England and Wales are (1) for each borough not being a borough to which s. 39 of the Local Government Act, 1888, applies, the borough council ; (2) for the residue of each administrative county the county council.

As to the Destructive Insects Act, see the note to s. 3 (xiii.), *ante*, p. 12.

As to the jurisdiction of a borough council under the Acts relating to gas meters, see the note to s. 34, sub-s. (3), *ante*, p. 75.

Under the Weights and Measures Act, 1878, the borough councils were the local authorities in boroughs which had separate quarter sesssions. In boroughs not having separate quarter sessions they were the local authorities only if they so resolved, or if in 1878 they possessed separate local standards (41 & 42 Vict. c. 49, s. 50). All powers of borough councils ceased under this Act in the smaller boroughs.

The provisions of this Act, as to members of the police force holding office on the appointed day, are contained in ss. 118, 119, *post*.

(2.) Provided that nothing in this section shall transfer to the county council any powers, duties, or liabilities under section thirty-four of the Contagious Diseases (Animals) Act, 1878, as amended by section nine of the Contagious Diseases (Animals) Act, 1886. 41 & 42 Vict. c. 74. 49 & 50 Vict. c. 32.

The sections above referred to are not repealed by the Diseases of Animals Act, 1894 ; they are set out in Lumley's Public Health, p. 486. By s. 9 of the Act of 1886, the powers of local authorities under s. 34 of the Act of 1878, and the Orders made under that section applying to dairies and milkshops,

Sect. 39 (2). are vested in sanitary authorities, The powers of a borough council, as urban authority under that Act, are preserved by this sub-section.

NOTE.

(3.) The urban authority for any borough or town with such population as above in this section mentioned shall cease to be the local authority under the Acts relating to explosives, and the county council shall have the like authority under the said Acts in the said borough or town as they have in the rest of their county.

The word "town" is not defined by this Act. It refers probably to improvement districts in which, by s. 68 of the Explosives Act, 1875, the commissioners might, by order of the Secretary of State, have become the local authority in like manner as the council of a borough assessed to the county rate, as to which see the note to s. 38, sub-s. (2), *ante*, p. 84. This sub-section puts an end to the powers of such commissioners.

Application of Act to Metropolis.

Application of Act to metropolis as county of London.

40. In the application of this Act to the Metropolis, the following provisions shall have effect :—

(1.) The Metropolis shall, on and after the appointed day, be an administrative county for the purposes of this Act by the name of the administrative county of London.

For the definition of "the Metropolis," see s. 100, *post*. The term "administrative county" is defined by the same section. It will be seen by the next sub-section that the county of London exclusive of the city of London is a separate county for all non-adminstrative purposes.

The appointed day is defined by s. 109, *post*.

It was held that by virtue of this section the London County Council was the proper authority to certify under 6 Vict. c. 18, s. 55, for the costs of the returning officer preparing the register of parliamentary voters in the borough of Deptford, notwithstanding s. 92, *post*, which retains that borough in the county of Kent for county parliamentary purposes. *Weller* v. *Collins*, 54 J. P. 441 ; 6 T. L. R. 342.

(2.) Such portion of the administrative county of London as forms part of the counties of Middlesex, Surrey, and Kent, shall on and after the appointed day be severed from those counties, and form a separate county for all non-administrative purposes by the name of the county of London ; and it shall be lawful for Her Majesty the Queen to appoint a sheriff of that county, and to grant a commission of the peace and court of quarter sessions to that county ; and, subject to the provisions of this Act, all enactments, laws, and usages with respect to counties in England and Wales, and to sheriffs, justices, and

quarter sessions shall, so far as circumstances admit, apply to the county of London : Sect. 40 (2)

The county of London as here limited is a separate county for all non-administrative purposes, with a sheriff, quarter sessions, and commission of peace for itself.

(3.) Provided that, for the purpose of the jurisdiction of the justices under such commission, and of such court, as well as other non-administrative purposes, the county of the city of London shall continue a separate county, but if and when the mayor, commonalty, and citizens of the city assent to jurisdiction being conferred therein on such justices and court, may by commission under the Great Seal be made subject to the jurisdiction thereof.

The city of London is part of the administrative county of London for the purposes of this Act. For non-administrative purposes it will continue to be a separate county until the event mentioned in the text.

(4.) The number of the county councillors for the administrative county of London shall be double the number of members which, at the passing of this Act, the parliamentary boroughs in the metropolis are authorized by law to return to serve in Parliament ; and each such borough, or, if it is divided into divisions, each division thereof shall be an electoral division for the purposes of this Act, and the number of county councillors elected for each such electoral division shall be double the number of members of Parliament which such borough or division is, at the passing of this Act, entitled to return to serve in Parliament :

The number of councillors in the county of London is thus fixed by the Act itself, and not by the Local Government Board, under s. 2, sub-s. (3), *ante*. In like manner the electoral divisions are fixed, and consist of the parliamentary divisions. The result is that the city of London returns four county councillors, and the rest of the metropolis one hundred and fourteen; this, of course, is in addition to the aldermen elected under the next sub-section, who are nineteen in number.

(5.) Provided that the number of county aldermen in the administrative county of London shall not exceed one-sixth of the whole number of county councillors.

In other counties the number of aldermen is one-third of the council. See s. 14 of the Municipal Corporations Act, 1882, *post*.

(6.) The provisions of this Act with respect to the powers, duties, and liabilities of county councils, and the transfer

Sect. 40 (6).

of property, debts, and liabilities of counties to county councils, shall apply to the administrative county of London in like manner, so nearly as circumstances admit, as if the quarter sessions, justices, and clerks of the peace of the counties of Middlesex, Surrey, and Kent had been, so far as regards the Metropolis, the quarter sessions, justices, and clerk of the peace for the administrative county of London.

This provision applies in effect to the first part of this Act so far as regards the transfer to the county councils from quarter sessions and justices, and the transfer of property under Part IV.

(7.) Provided that any property, debts, or liabilities of the county of Kent shall not, by reason only of this enactment, be vested in the county council of London, but such property, debts, and liabilities, and also the property, debts, and liabilities of the counties of Middlesex and Surrey, shall be apportioned between the portions of those counties situate within the metropolis and the portions situate outside the metropolis in such manner as may be determined by agreement between the respective county councils, or in default of agreement by the Commissioners under this Act, and the property, debts, and liabilities apportioned to the portions within the metropolis shall be the property, debts, and liabilities of the whole of the administrative county of London.

As to the Commissioners under this Act, see s. 61, *post*.

(8.) There shall also be transferred to the London County Council the powers, duties, and liabilities of the Metropolitan Board of Works, and after the appointed day that board shall cease to exist, and the property, debts, and liabilities thereof shall be transferred to the London County Council, and that council shall be in law the successors of the Metropolitan Board of Works.

The Metropolitan Board of Works had not only extensive powers in the metropolis as to drainage, streets, open spaces, bridges, etc., but were the local authority for the execution of numerous Acts in the metropolis, such as the Artizans Dwellings Acts, the Contagious Diseases (Animals) Acts, etc. The provisions of the several statutes relating to the powers, duties, and liabilities hereby transferred are too numerous for insertion here.

(9.) If the London County Council borrow for the purposes of this Act they shall borrow in accordance with the provisions of the Acts relating to the Metropolitan Board of Works, but save as aforesaid Part Four of this

Act shall apply to the London County Council when acting as successors of the Metropolitan Board of Works, and the costs incurred when so acting shall be paid out of the county fund, and the payment thereof shall be a general county purpose. Sect. 40 (9).

The effect of this sub-section is that the provisions of this Act as to borrowing (*post*, ss. 69, 70) do not apply to the London County Council, whose borrowing powers are regulated by special legislation. See the note to s. 70 (2), *post*, p. 136.

Position of city of London, and application of Highway Acts.

41.—(1.) Of the powers, duties, and liabilities of the court of quarter sessions and justices of the city of London—

(*a.*) such of them as would, if the city were a quarter sessions borough, with a population exceeding ten thousand, be exercised by virtue of this or any other Act by the council of the borough, shall be transferred to the mayor, commonalty, and citizens of the city acting by the council (in this Act referred to as the common council); and

(*b.*) such of them as would, in the said case, be by virtue of this Act exercised and discharged by the county council shall cease, and the county council shall, subject to the provisions of this Act, have those powers, duties and liabilities within the city of London in like manner as within the rest of the administrative county of London.

As to the definition of the quarter sessions of the city of London, see s. 100, *post*.

Under this sub-section such powers as would, if the city were a quarter sessions borough under ss. 35, 36, be exercised by the council, will be exercised by the common council. These include the powers, duties, and liabilities of a local authority under the Explosives Acts, 1875, the Petroleum Acts, 1871 to 1881, the Weights and Measures Acts, 1878 to 1893, the Reformatory and Industrial Schools Acts, (see *ante*, p. 77). The common council are expressly created a "local authority" under the Lunacy Act, 1890, s. 240. Such other powers of the quarter sessions and justices as would, under ss. 35, 36, be transferred to a county council, will be transferred to the London County Council. This includes the licensing of places for music and dancing under 25 Geo. 2, c. 36.

(2.) The provisions of this Act with respect to the transfer to a county council shall apply with the necessary modifications to such transfer to the common council, and the common council shall be entitled to receive from the London County Council in respect of each pauper lunatic, the same amount as is required by this Act to be paid by any other county council to the council of a borough.

The amount required to be paid for each pauper lunatic is that provided by s. 24, sub-s. (2) (*g*), *ante*, p. 56.

(3.) Where at the passing of this Act the Metropolitan Board of Works or the quarter sessions of Middlesex are authorized to incur

Sect. 41 (3). costs for any purpose, and the common council of the city are not liable to contribute to such costs, the parishes in the city of London shall not, save as in this Act expressly mentioned, be liable to be assessed to county contributions in respect of costs incurred by the county council for such purpose, but this exemption shall not extend to any costs incurred for the purpose of any powers, duties, or liabilities of the quarter sessions or justices of the city of London, which will be exercised and discharged by the London County Council.

This continues exemptions of the city and forms an exception to the provisions in s. 40 (9), *ante*, which makes all costs of the London County Council as successors to the Metropolitan Board of Works payable as for general county purposes. As to the costs of quarter sessions, see sub-s. (5), *infra*.

41 & 42 Vict. c. 77. (4.) The provisions of the Highways and Locomotives (Amendment) Act, 1878, with respect to main roads, as amended by this Act, shall extend to the Metropolis in like manner as if the expression "urban sanitary district" in that Act included, as respects the Metropolis, the city of London, and a parish in Schedule A., and a district in Schedule B., of the Metropolis Management Act, 1855, as amended by subsequent Acts, and as if the Commissioners of Sewers, or vestry, or district board (as the case may be) were the urban sanitary authority: Provided that—

18 & 19 Vict. c. 120.

(*a.*) in the city of London the common council shall have the power under the Highways and Locomotives (Amendment) Act, 1878, of making bye-laws respecting locomotives, and authorizing locomotives to be used on any road within the city, save that if any difference is made by such bye-laws or authority between any main road maintained by the county council and the other roads in the city, such authority and bye-laws shall require the approval of the county council; and

(*b.*) the common council in the city of London, and in any other part of the Metropolis, the vestry, or district board, shall be deemed to be a district council and an urban authority within the meaning of the provisions of this Act with respect to main roads, and may accordingly claim to retain the power of maintaining and repairing a main road, and in such case shall have all such powers and duties of maintaining, repairing, improving and enlarging, and otherwise dealing with the main road as they would have if it were an ordinary highway repairable by them, and such powers and duties shall

in the city of London be discharged by the Commissioners of Sewers. Sect. 41 (4).

The commissioners of sewers no longer exist, their powers having been transferred to the common council of the city of London by 60 & 61 Vict. c. cxxxiii.

This sub-section down to the end of the first paragraph is similar to that contained in s. 35, which provides for the larger quarter sessions boroughs. The county council for London exercise the general powers of a county authority in the metropolis. See s. 3 (viii.), *ante*, p. 9.

In the city the common council make bye-laws as to locomotives. The saving to this provision is similar to that contained in s. 35, sub-s. (4).

The provisions of this Act as to main roads are contained in s. 11, *ante*, pp. 21 *et seq.*

(5.) The payment of the costs of assizes and sessions shall be a general county purpose for which the parishes in the city may be assessed to county contributions, and all such costs of prosecutions in the city as are by law payable out of the county rate shall be paid out of the county fund.

As to what is included in the "costs of assizes and sessions," see s. 100, *post*.

The expression "assizes" includes the Central Criminal Court.

As to the prosecutions the costs of which are payable out of the county rate, see the statutes mentioned in the note to s. 67, *post*.

(6.) The county councillors elected for the city, shall not act or vote in respect of any question arising before the county council as regards matters involving expenditure on account of which the parishes in the city are not for the time being liable to be assessed equally with the rest of the administrative county to county contributions.

Compare the similar provisions of s. 35, sub-s. (6), *ante*, p. 81.

(7.) The London county council, and the common council of the city of London may agree for the cessation in whole or in part of any exemption under this section from assessment, in consideration either of payment by the county council of a capital sum, or of an annual payment, or of a transfer of property or liabilities, or of the county council undertaking, in substitution for the common council, any powers or duties, or partly for one consideration and partly for another, or in any other manner, according as may be determined.

This sub-section is identical with s. 35, sub-s. (7), *ante*, p. 81.

(8.) The sheriffs of the city of London shall not have any authority except in the city.

As to the sheriff of Middlesex, see s. 46, sub-s. (6), *post*.

42.—(1.) If the London county council petitions Her Majesty the Queen in that behalf, it shall be lawful for Her Majesty from Arrangements for paid chairman

Sect. 42 (1). time to appoint a barrister of not less than ten years' standing to be paid chairman or deputy chairman, or one of the paid deputy chairmen, as the case may be, of the quarter sessions for the county of London.

and sitting of quarter sessions for London.

As to the appointment of a substitute for the chairman or deputy chairman in case of sickness or absence, and as to the pensions payable to the chairman and deputy chairman, see the Quarter Sessions (London) Act, 1896 (59 & 60 Vict. c. 55).

(2.) Any person so appointed shall hold office during good behaviour, and shall by virtue of his office be a justice of the peace for the county of London.

(3.) There shall be paid to him out of the county fund as a general county purpose such yearly salary not exceeding that stated in the petition in consequence of which the appointment was made, as Her Majesty directs.

As to general county purposes, see s. 68, *post*.

(4.) Such chairman or deputy chairman shall not, during his office, be eligible to serve in Parliament, and shall not, during his continuance in office practise as a barrister.

(5.) Where there is any such paid chairman or deputy chairman of the quarter sessions, the court may be held before such chairman or deputy chairman alone.

(6.) Separate courts of quarter sessions may be held at different parts of the county of London at the same time if so directed by the county council with the approval of a Secretary of State, and every court of general sessions of the peace for the county of London and every adjournment thereof shall have the same jurisdiction in all respects, including the power of hearing and determining appeals, as if such court were quarter sessions.

(7.) The London county council may from time to time submit to a Secretary of State a scheme for regulating the holding of courts of quarter sessions in London either at any one place or at different places, and in the latter case either at the same time or at different times, and for determining the legal character of each sessions so held, that is to say, whether quarter, general, original, or adjourned sessions, or otherwise, and for making such regulations respecting committals for trial, recognisances, depositions, and other matters as are necessary or proper for giving effect to the scheme, and such scheme, when approved by a Secretary of State, shall be published in the London Gazette, and thereupon shall have effect as if it were enacted in this Act.

A scheme under this sub-section was approved by the Secretary of State on March 24th, 1892, and is published in the Statutory Rules and Orders, 1892, p. 587.

(8.) Until the quarter sessions for the county of London constitute special sessional divisions, every petty sessional division of the counties of Middlesex, Surrey, and Kent existing at the appointed day, or so much of such division as is situate in the county of London, shall form a special or petty sessional division of the county of London. Sect. 42 (8).

Counties are divided into petty sessional districts under 9 Geo. 4, c. 43 ; 6 & 7 Will. 4, c. 12 ; 22 & 23 Vict. c. 65.

(9.) Where any special or petty sessional division of the counties of Middlesex, Surrey and Kent, existing at the appointed day, is situate partly within and partly without the county of London, so much thereof as is situate without the said county shall, until any alteration is made by the quarter sessions for the county of Middlesex, Surrey, or Kent, as the case may be, be a special or petty sessional division of that county.

As to the salaries of existing clerks of these divisions, see s. 119, (11), *post*.

(10.) The quarter sessions for the county of London shall be substituted for the general assessment sessions under the Valuation (Metropolis) Act, 1869, and have all the jurisdiction vested in those sessions, and shall exercise the same within the same area. Upon the hearing of any appeals in relation to property in the city of London, such two members of the court of quarter sessions of the city of London as may be appointed by that court for the purpose, shall be entitled to attend and sit as members of the quarter sessions for the county of London. 32 & 33 Vict. c. 67.

Under this sub-section the general assessment sessions ceased to exist. The London quarter sessions exercise the jurisdiction of that court within the same area, *i.e.*, in all unions or parishes not in unions wholly or for the greater part in value situate within the jurisdiction of the Metropolitan Board of Works under the 18 & 19 Vict. c. 120. The jurisdiction transferred by this sub-section is exercised by the quarter sessions under the same conditions as those under which it was formerly exercised by the general assessment sessions : *R.* v. *London JJ. and London County Council*, [1893] 2 Q. B. 476 ; 69 L. T. (N.S.) 682 ; 41 W. R. 668 ; 58 J. P. 8 ; 9 T. L. R. 652.

The concluding part of this sub-section provides for the representation of the city of London, having regard to the fact that the city may not be within the jurisdiction of the London quarter sessions. See s. 40, sub-s. (3), *ante*, p. 89.

(11.) The enactments respecting the times for holding sessions of the peace for the county of Middlesex, and the appointment and payment of any assistant judge or deputy assistant judge, or of a person to preside in a second court at any sessions in the county of Middlesex, shall cease to apply to the county of Middlesex. 7 & 8 Vict. c. 71. 22 & 23 Vict. c. 4. 37 & 38 Vict. c. 7.

The effect of this clause is that in the county of Middlesex sessions are now

Sect. 42 (11) NOTE. held at the same times as in other counties not regulated by local Acts. See 11 Geo. 4, and 1 Will. 4, c. 70, s. 35.

(12.) Quarter sessions for the counties of Middlesex, Surrey, and Kent respectively may be held, and the justices of each of those counties may hold special and petty sessions for any division of such county, and appoint a petty sessional or occasional court house, at any place in the county of London, and for all purposes relating to such sessions or any business transacted at such court house, such place shall be deemed to be within the county and division for which the justices holding the same are justices, but no jurors shall be summoned for such sessions from within the county of London.

As to the appointment of petty sessional and occasional court houses, see 42 & 43 Vict. c. 49, s. 20 ; 47 & 48 Vict. c. 43, s. 8.

As to the summoning of jurors for quarter sessions, see 6 Geo. 4, c. 50, s. 13 ; 1 Vict. c. 4.

(13.) Nothing in this Act shall alter the powers or duties of the justices, quarter sessions, recorder, or common serjeant of the city of London, further or otherwise than is expressly provided or than the powers and duties of the justices or quarter sessions of any county are altered.

See s. 40, sub-s. (3), and s. 41, *ante*.

(14.) Provided that from and after the appointed day the rights claimed by the court of common council to appoint to the offices of common serjeant and judge of the City of London Court, shall cease, and in any future vacancy in each of the said offices it shall be lawful for Her Majesty the Queen to appoint a duly qualified barrister to be such common serjeant or judge ; and from and after the next vacancy no recorder shall exercise any judicial functions unless he is appointed by Her Majesty to exercise such functions.

As to the definition of the appointed day, see s. 109, *post*.

These officers were formerly appointed by the common council. Under the provisions in the text only the recorder can be appointed by that body, and he will not be able to exercise any judicial functions unless so appointed by the Crown.

Grant by London County Council to poor law unions.

43.—(1.) In the administrative county of London the county council :—

(*a*.) Shall pay to the guardians for every poor law union wholly in the county such sums as the Local Government Board from time to time certify to be due from the said council

in substitution for the local grants towards the remuneration of poor law medical officers, and towards the cost of drugs and medical appliances; and

(*b.*) Shall grant to the guardians of every poor law union wholly in their county an amount equal to fourpence a day per head for every indoor pauper maintained in that union, and such grant, during the five local financial years beginning on the appointed day, shall be reckoned according to the average number of indoor paupers so maintained during the five financial years ending on the twenty-fifth day of March next before the passing of this Act, and shall, after the end of the said five local financial years, unless Parliament otherwise determine, continue to be reckoned in accordance with the same average number; and

(*c.*) Shall pay to the guardians of every poor law union, a portion of which only is situate in their county, such proportion of the annual sum which is, under the other provisions of this Act, payable by the county council of a county to the guardians of that union, as the rateable value of the portion within the administrative county of London bears to the rest of the union.

As to what is the administrative county of London, see s. 40, sub-s. (1), *ante*, p. 88, and notes.

The payment under (*a*) is similar to that made by other county councils under ss. 24 and 26, *ante*.

The grant in respect of indoor paupers is to be in addition to any payment made out of the Metropolitan Common Poor Fund. See s. 94, *post*.

For the definition of "indoor paupers," see the next sub-section.

As to the estimate of the average number, see sub-s. (3), *infra*.

Payments are made by county councils to guardians under ss. 24 and 26, *ante*.

(2.) For the purposes of this section the expression "indoor pauper" includes all paupers maintained in a workhouse, and all paupers maintained in any district school, separate school, separate infirmary, sick asylum, hospital for infectious diseases, or institution for the deaf, dumb, blind, or idiots, or in any certified school under the Act of the session of the twenty-fifth and twenty-sixth years of the reign of Her Majesty, chapter forty-three, and includes any children boarded out, whether within or without the limits of the union, and in the metropolitan asylum district includes all inmates of any asylum for imbeciles provided by the managers of that district, but excludes paupers relieved in casual wards, and such number of indoor paupers in a workhouse or in a district or separate school or in a separate infirmary or asylum, as exceeded the number prescribed by the Local Government Board for that

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workhouse, school, infirmary, or asylum, and also excludes paupers maintained for part only of a day: Provided always, that any paupers maintained under any contract or agreement in a workhouse other than that of the union to which they are chargeable, shall be included only in the number of indoor paupers of the union to which they are so chargeable.

The text contains a very elaborate definition of indoor paupers, but its importance is limited to the Local Government Board, whose duty it will be to consider it with a view to making the estimate under the next sub-section.

(3.) The average number of paupers shall be estimated in such manner as the Local Government Board direct, and shall be certified by the Board. The Board may, if they think proper, vary their certificate, but unless it is so varied, their certificate shall be conclusive.

Transfer of duties under 32 & 33 Vict. c. 67, of clerk of metropolitan asylum managers.

44. On and after the appointed day all powers and duties of the clerk to the managers of the metropolitan asylums district under the Valuation (Metropolis) Act, 1869), shall be transferred to the clerk of the county council of London, and the said Act shall be construed as if the county council were substituted therein for the managers of the metropolitan asylums districts.

By the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 14, a duplicate of the revised valuation list is to be sent to the clerk of the managers of the metropolitan asylums district; and by s. 16 the list so sent is to be deposited at the office of such managers. The clerk is by s. 17 to cause the totals of the gross and rateable values of all the lists to be printed, and a copy to be sent to every assessment committee and to the clerks of the peace for every county in which any parish to which such totals relate is situate.

By s. 41 notice of every alteration in the total of the gross and rateable value of any valuation list, made in consequence of any decision on appeal, is to be sent by the clerk of the assessment committee to the clerk of the managers, and by him sent to every person and body who have power to make any rate, or require any contribution based on such total.

By s. 42, sub-s. (8), the assessment committee are to approve and send the lists to the clerk before November 1st in each year, and by sub-s. (11) the clerk is to send out the printed totals before December 1st, and is to return the valuation list to the committee not sooner than fourteen, nor later than twenty-one, days after the totals are sent out.

These duties devolve under this section on the clerk of the London County Council.

45. [*Adjustment of law as to slaughter-houses in the metropolis.*]

This section is repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), and substantially re-enacted by s. 20 of that Act.

Application of Act to Special Counties and to Liberties. Sect. 46.

Application of Act to certain special counties.

46. For the purposes of this Act there shall be enacted the provisions following; that is to say,

(1.)—(*a.*) The ridings of Yorkshire and the divisions of Lincolnshire shall respectively be separate administrative counties.

(*b.*) The eastern and western divisions of Sussex, under the County of Sussex Act, 1865, and the eastern and western divisions of Suffolk, shall respectively be separate administrative counties for the purposes of this Act. 28 & 29 Vict. c. 37.

(*c.*) The Isle of Ely, and the residue of the county of Cambridge, shall be respectively separate administrative counties for the purposes of this Act, and are in this Act referred to as divisions of the county of Cambridge.

(*d.*) The soke of Peterborough and the residue of the county of Northampton shall be respectively separate administrative counties for the purposes of this Act, and are in this Act referred to as divisions of the county of Northampton.

These divisions of counties, which for the purposes of this Act are treated as separate counties, necessitated the introduction of the phrase "administrative counties," defined in s. 100, *post*.

The divisions of Lincolnshire are the parts of Holland, Kesteven, and Lindsey. See s. 100, *post*.

(2.)—(*a.*) In the case of the county of York and the county of Lincoln respectively, the administrative business which would, if this Act had not passed, have been transacted by the justices of all the ridings and divisions at their gaol sessions, or by any joint committee of the justices of such ridings or divisions, or by any commissioners appointed by the justices, or otherwise jointly by such justices, shall be transacted by a joint committee of the county councils of the three ridings or three divisions, as the case may be, appointed in manner provided by this Act with respect to joint committees of county councils.

(*b.*) The administrative business which would, if this Act had not passed, have been transacted by any general sessions of the peace for the county of Sussex or Suffolk, or by any joint action of the quarter sessions of the divisions of the county of Cambridge, or the county of Northampton, and all matters under this Act which concern the two

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divisions of Sussex, Suffolk, Cambridge or Northampton jointly, shall be transacted by a joint committee of the respective county councils concerned, appointed in manner provided by this Act with respect to joint committees of county councils.

(*c.*) A joint committee formed in pursuance of this section shall, if the business transacted by them so require, comprise a joint committee of the quarter sessions of the several ridings and divisions.

(*d.*) If any difference arises as to the number of members, or the mode or time of appointing a joint committee under this section, the difference shall be determined by a Secretary of State.

As to gaol sessions in Yorkshire and Lincolnshire, see 5 Geo. 4, c. 12, and 28 & 29 Vict. c. 126, ss. 5, 6.
As to the formation of joint committees, see sub-s. (3), *infra*.

(3.) A joint committee formed in pursuance of this section shall, in respect of the business to be transacted by them, stand in the same position as if the entire county were not divided for the purposes of county councils, and as if the committee were the county council of the entire county, and the provisions of this Act shall, so nearly as circumstances admit, apply accordingly, and all costs or sums payable by the joint committee shall be apportioned by the joint committee between the several administrative counties in such manner as is provided by law, or by the practice heretofore adopted, or in such other manner as may be from time to time agreed upon by the councils of the several administrative counties, or in default of agreement may, upon the application of any of such councils, be determined by arbitration in manner provided by this Act; and each county council shall pay the sum so apportioned to the treasurer of the joint committee, and the sum so paid shall be deemed to be paid for general county purposes.

The "entire county" is defined by s. 100, *post*.
As to "arbitration in manner provided by this Act," see s. 62, *post*.

(4.) The powers, duties, and liabilities of the county authority, under the Yorkshire Registries Act, 1884, and the Acts amending the same, shall, after the appointed day, be transferred to the county council, and the expression

"county authority" in those Acts shall mean, as respects each riding, the county council of that riding. Sect. 46 (4).

The Yorkshire Registries Act, 1884, is the 47 & 48 Vict. c. 54, and it is amended by 48 & 49 Vict. c. 26. See also the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 23, *post*, under which agreements may be made for the transfer of the business of three local registries to the office of land registry.

Before this Act the "county authority" under these Acts was, as regards each riding, the justices in quarter sessions. There is an office for registration of deeds in each riding.

(5.) In the application of this Act to Lancashire, the provisions of this Act with respect to county rates shall apply to the special rates levied in Lancashire for the purposes of the salary or pension of any chairman of quarter sessions or stipendiary justice, or for any assize courts, and such rates shall continue to be levied within the respective areas within which they would have been levied if this Act had not passed, and, subject as aforesaid, the position and salary of any such chairman or justice shall not be affected by any provision of this Act.

(6.) From and after the appointed day the right of the mayor, commonalty, and citizens of the city of London to elect the sheriff of Middlesex shall cease, and it shall be lawful for Her Majesty the Queen to appoint a sheriff of the county of Middlesex, and the law relating to sheriffs shall apply in the case of the county of Middlesex in like manner as in the case of any other county.

As to the sheriff of the county of London, see s. 40, sub-s. (2), *ante*, p. 88. By s. 41, sub-s. (8), the sheriffs of the city of London are not to have authority beyond the city.

(7.) In this section "administrative business" means such business as is by this Act transferred from quarter sessions or justices, or any committee thereof, to county councils.

See ss. 3, 4, 7, 9, *ante*.

Saving for Manchester Assize Courts Act, 1858, 21 & 22 Vict c. xxiv.

47.—(1.) Notwithstanding anything in this Act, the courts of assize at Manchester, with the lodgings for Her Majesty's judges, offices, lock-ups, and all other property vested in the justices of the peace of the county palatine of Lancaster by the Manchester Assize Courts Act, 1858, shall be vested in the county council of the said county palatine, and shall be under the control and management of a joint committee of members of the said county council, and of the council of every county borough locally situate in the hundred of Salford; and that joint committee shall have and exercise all such powers and rights (except the power of

Sect. 47 (1) levying, imposing, or assessing a rate or of borrowing money) as are conferred on the said justices by the said Act; and the hundred of Salford (including every borough locally situate therein) shall continue liable to contribute towards expenses incurred under the authority of the said Act.

(2.) The number of members of a joint committee appointed for the purposes of this section shall not exceed twelve, and the quorum requisite for the transaction of business shall be three.

(3.) Any disagreement as to the number of members of the committee or as to the proportions in which the several councils are to be represented thereon, shall be settled by a Secretary of State.

Merger of liberties in county.

48.—(1.) For all purposes of this Act, every liberty and franchise of a county, wholly or partly exempt from contribution to the county rate, shall, save as may be otherwise provided by or in pursuance of this Act, form part of the county of which it forms part for the purposes of parliamentary elections.

This provision practically abolishes liberties and franchises for all purposes of the Act. If it is desired to abolish any liberty for all purposes whatever, it may be done by Her Majesty in Council under 13 & 14 Vict. c. 105.

It may be observed that this Act does not transfer to the county council the powers of the freeholders of a liberty to elect a coroner for that liberty. See s. 5 (1), *ante*, p. 15, and the case of *Ex parte London County Council*, cited in the notes thereto.

(2.) The provisions of this Act with respect to the transfer to the county council of the powers, duties, and liabilities of the quarter sessions and justices of a county, and of their property, debts, and liabilities, whether vested in or attaching to the clerk of the peace or any justice or justices or otherwise on behalf of the county, shall apply to every such liberty and franchise as above-mentioned in like manner in all respects as if they were herein re-enacted and in terms made applicable to such liberty and franchise; and the county council shall have and exercise in every such liberty and franchise the powers and duties transferred to them by this Act from the quarter sessions and justices of the county;

This transfers to the county council all such powers, duties, etc., of the quarter sessions or justices of a liberty as are transferred to them from the quarter sessions of the county at large.

(3.) Provided that where at the passing of this Act the police force in such liberty or franchise is under the control of the quarter sessions for such liberty or franchise, there shall be one police force for the whole administrative county under the county council, and the quarter sessions of such liberty or franchise shall appoint such

number of the members of the standing joint committee under this Act as may be agreed upon by the county council, the quarter sessions of the county, and the quarter sessions of the liberty or franchise, or in default of agreement may be determined by a Secretary of State. Sect. 48 (3).

As to the standing joint committee, see s. 30, *ante*, p. 66. The separate police force for the liberty will thus be abolished, and the police of the liberty will become county police.

(4.) The Cinque Ports and two ancient towns and their members shall for all purposes of the county council and of the powers and duties of quarter sessions and justices out of sessions under this Act form part of the county in which they are respectively situate, without prejudice nevertheless to the position of any such port, town, or member as a quarter sessions borough under the Municipal Corporations Act, 1882, as amended by this Act, and without prejudice to the existing privileges of such ports, towns, and members as respects matters which are not affected by this Act. 45 & 46 Vict. c. 50.

The Cinque Ports were originally Sandwich, Dover, Hythe, Romney, and Hastings, but to these were added the two "ancient towns" of Winchelsea and Rye. To each of these municipal towns, except Hythe and Winchelsea, were attached subordinate ports or towns, called corporate members of the principal port. Besides these there were a number of towns, villages, and hamlets, which formed the unincorporated members of the Cinque Ports, all exclusively under the jurisdiction of their respective ports, from which they were in some cases a long distance off. See Archbold's Quarter Sessions, p. 50, where an account of the jurisdiction of the justices and the quarter sessions of the Cinque Ports is shortly stated. For the purposes of the powers and duties transferred to the county council, the Cinque Ports are to be merged in the counties of Kent, Sussex, or Essex, as the case may be. Hastings is a county borough; Sandwich, Dover, and Hythe are quarter sessions boroughs. Of these last mentioned Dover only has a population exceeding 10,000. The effect of the Act upon the Cinque Ports was to some extent considered in the case of *Ex parte The Kent County Council and the Councils of Dover and Sandwich*, cited in the notes to s. 35 (5), *ante*, p. 80.

49.—(1.) It shall be lawful for the Local Government Board to make a Provisional Order for regulating the application of this Act to the Scilly Islands, and for providing for the exercise and performance in those islands of the powers and duties both of county councils and also of authorities under the Acts relating to highways and the Public Health Act, 1875, and the Acts amending the same, and for the application to the islands of any provisions of any Act touching local government, and any such order may provide for the establishment of councils and other local authorities separate from those in the county of Cornwall, and for the contribution by Power to make Provisional Order for Scilly Islands

Sect. 49 (1). the Scilly Islands to the county council of Cornwall in respect of costs incurred by the county council for matters specified in the said order as benefiting the Scilly Islands, and such order may also provide for all matters which appear to the Local Government Board necessary or proper for carrying the order into full effect.

(2.) Any such order shall not be in force until it is confirmed by Parliament.

(3.) Subject to the provisions of a Provisional Order under this Act, the county council of Cornwall shall have no greater powers or duties in the Scilly Islands than the quarter sessions of Cornwall have hitherto in fact exercised or performed therein, and the Scilly Islands shall not be included for the purposes of this Act in any electoral division of the county of Cornwall.

A provisional order under this section was made by the Local Government Board on May 19th, 1890, and was confirmed by the Local Government Board's Provisional Order Confirmation (No. 6) Act, 1890 (53 & 54 Vict. c. clxxvi.). It establishes the "council of the Isles of Scilly," and applies certain of the provisions of this Act to the Scilly Islands.

PART III.

Boundaries.

Boundary of county for first election.

50.—(1.) The first council elected under this Act for any administrative county shall, subject as hereinafter mentioned, be elected for the county at large as bounded at the passing of this Act for the purpose of the election of members to serve in Parliament for the county: Provided always, that—

(*a.*) This enactment shall not apply to the boundary between two administrative counties which are portions of one entire county, and in case of those administrative counties, the boundary between the portions, as existing for the purposes of county rate, shall, subject to any change made by or in pursuance of this Act, be the boundary of the administrative county for which the council is elected; and,

(*b.*) Where any urban sanitary district is situate partly within and partly without the boundary of such county, the district shall be deemed to be within that county which contains the largest portion of the population of the district, according to the census of one thousand eight hundred and eighty-one.

(*c.*) Where any portion of an administrative county has before the passing of this Act been transferred to another

administrative county for the purposes of the Acts relating to the police or Contagious Diseases (Animals) or otherwise, nothing in this Act shall affect such transfer.

(*d.*) The wapentake of the ainsty of York (except so much as is included in the municipal borough of York as extended by the York Extension and Improvement Act, 1884) shall for all purposes of this Act be deemed to be part of the west riding of the county of York. 47 & 48 Vict. c. ccxxxii.

As to the definition of "administrative county," see s. 100, *post*. The boundary of an entire county is that which exists for the purposes of parliamentary elections, but where an entire county is divided into administrative counties, the boundary between these is to be that existing for the purposes of the county rate.

As to future changes of county boundaries, see s. 54, *post*.

The provision as to urban sanitary districts in two or more counties deserves attention.

Notwithstanding this provision, however, it was held that a county might continue liable for a share of the expenses of repairing a bridge which by virtue of this provision became wholly situate within another county, the repairs being payable under a local Act and therefore within the saving in s. 125, *post*. *Re Staffordshire and Derbyshire County Councils*, 54 J. P. 566.

A portion of a county may have been transferred to another for purposes of police under 2 & 3 Vict. c. 93, s. 27 ; 3 & 4 Vict. c. 88, s. 2, and 21 & 22 Vict. c. 68, s. 2, and for purposes of the Contagious Diseases (Animals) Acts by 47 & 48 Vict. c. 47. Such transfers are now effected under the Diseases of Animals Act, 1894, s. 39, which repeals the last mentioned Act. And by the Lunatic Asylums Act, 1853 (16 & 17 Vict. c. 97), s. 131, every city, town, liberty, parish, place or district, not being a borough within the meaning of that Act, but being situate partly in one county and partly in another, might be annexed for asylum purposes to one of such counties in the manner therein provided.

(2.) The county council elected under this Act shall have for the purposes of this Act authority throughout the administrative county for which it is elected, and the administrative county as bounded for the purpose of the election shall, subject to alterations made in manner hereinafter mentioned, be for all the purposes of this Act the county of such county council.

(3.) If any difference arises as to the county which contains the largest portion of the population of any such district as above in this section mentioned, such difference shall be referred to the Local Government Board, whose decision shall be final.

(4.) This section applies to an administrative county within the meaning of this Act, save that it shall not apply to the administrative county of London, nor to any county borough, and any place which, though forming part of any such borough for the purposes of the election of members to serve in Parliament, is not within the municipal boundary of such borough shall, notwithstanding anything in the foregoing provisions of this section, form for

Sect. 50 (4). the purposes of this section part of the county in which such place is situate.

An administrative county within the meaning of this Act is defined by s. 100, *post*.

Directions for constitution of electoral divisions.

51. In the constitution of electoral divisions of a county, whether for the first election or for subsequent elections, the following directions shall be observed—

(1.) The divisions shall be arranged with a view to the population of each division being, so nearly as conveniently may be, equal, regard being had to a proper representation both of the rural and of the urban population, and to the distribution and pursuits of such population, and to area, and to the last published census for the time being, and to evidence of any considerable change of population since such census ;

Electoral divisions were formed in the first instance in counties by the quarter sessions, and in boroughs returning more than one councillor by the councils of such boroughs. See s. 2, sub-s. (3), *ante*, p. 3. The boundaries of electoral divisions can be altered by order of the Local Government Board, under s. 54, *post*.

This section lays down the lines on which these divisions should be formed and maintained.

The divisions are to contain, as nearly as possible, the same population, but this principle is not to apply universally. Regard is to be had to area, so that one division shall not be too extensive through containing a smaller population while another containing a larger population is unduly limited in area. The relative distribution of the urban and rural population and their pursuits is also to be taken into account. Regard must also be had to the areas for which separate lists or parts of lists of voters have been made, so that the electoral divisions may be formed in such a way that there will be no difficulty in ascertaining who are the voters entitled to vote in each division.

As to the electoral divisions in the metropolis, see s. 40, sub-s. (4), *ante*, p. 89.

(2.) Electoral divisions shall, so far as may be reasonably practicable, be framed so that every division shall be a county district or ward, or a combination of county districts or wards, or be comprised in one county district or ward, but where an electoral division is a portion of a county district, or ward, and such portion has not a defined area for which a separate list or part of a list of voters is made under the Acts relating to the registration of electors, such portion shall, until a new register of electors is made, continue to be part of the district or ward of which it has been treated as being part in the then current register of electors ;

(3.) Whenever under the provisions of this section a county district is divided into two or more portions, every such portion shall, as far as possible, consist of an entire parish or of a combination of entire parishes ; Sect. 51 (3).

The general principle of these directions is that the electoral divisions are to be formed so as not to overlap an urban sanitary district, ward, or rural sanitary district, except in so far as it may be necessary to give effect to sub-s. (1). Regard is also to be had to the boundaries of parishes. Where a parish is partly within and partly without a borough or urban district, each parish is to be considered a separate parish for this purpose (see s. 100, *post*), but since the passing of the Local Government Act, 1894 (*post*), such a case can hardly occur.

The word "ward" is not defined in the Act, but it evidently means a ward of an urban district.

For the definition of "parish," see s. 100, *post*.

(4.) In determining the electoral divisions for the first election, the foregoing provisions shall apply as if, where a rural sanitary district is situate in more than one county, each portion of the district which is situate in the same county were a county district, and any such portion may be combined with a county district, or portion of a county district, although not adjoining ;

(5.) The electoral divisions for the first election shall be fixed on or before the eighth day of November next after the passing of this Act.

As to the future alteration of electoral divisions, see s. 54, *post*.

52.—(1.) The Local Government Board shall make provisional orders for dealing with every case where the council of a borough is not the urban sanitary authority for the whole of the area of such borough, and the area of the borough is either co-extensive with or is wholly or partly comprised in any urban sanitary district, and such order shall determine whether the area of the borough or of the sanitary district, or an area comprising both the borough and the urban sanitary district, or a portion of such united area, shall, whether with or without any adjoining area, be the area of the county district for the purposes of this Act, so, however, that in either case the order shall provide for the council of the borough becoming the district council, and the order may for that purpose alter the boundaries of the borough, and may, if need be, alter the boundaries of the county ; and if the population exceeds fifty thousand, the order may constitute the borough into a county borough, and make such provision as may be necessary for carrying this Act into effect as respects such county borough ; and

Provisional Order as respects boroughs and urban sanitary districts in same area

Sect. 52 (1) the provisions of this Act respecting county boroughs shall, subject to the provisions of the order, apply.

The foregoing provision applied only to fourteen exceptional cases :— Banbury, Blandford Forum, Colne, Cambridge, Chippenham, Faversham, Folkestone, Launceston, Lyme Regis, Lymington, Morpeth, Oxford, St. Ives, and Wenlock. Provisional Orders have been issued dealing with all these districts, and Oxford has been created a county borough.

(2.) Where certain members of the sanitary authority for any such urban sanitary district are appointed by a university or any colleges therein, the order may provide for the appointment by such university, or colleges, of members on the district council.

(3.) A provisional order under this section shall not be of any effect until it is confirmed by Parliament.

Consideration of alterations of boundaries by county councils.

53.—(1.) Every report made by the Boundary Commissioners under the Local Government (Boundaries) Act, 1887, shall be laid before the council of any administrative county or county borough affected by that report.

These reports were made by the Boundary Commissioners appointed under 50 & 51 Vict. c. 61. A similar provision is contained in the Local Government Act, 1894, s. 36 (12), *post*.

(2.) It shall be the duty of the council to take into consideration such report, and to make such representations to the Local Government Board as they think expedient for adjusting the boundaries of their county, and of other areas of local government partly situate in their county, with a view of securing that no such area shall be situate in more than one county.

There is no definition in the Act of "areas of local government," but it appears to be wide enough to include all areas which exist for such purposes as lighting, burials, highways, sanitary purposes, and possibly education, etc.

The representations made by the county councils will be dealt with under the next section.

With regard to unions situate in more than one county, see s. 58, *post*.

Since the passing of the Local Government Act, 1894, orders have been made by county councils, which have in most cases secured that the areas mentioned shall not be in more than one county. See s. 36 of that Act, *post*.

Future alterations of boundaries.

54.—(1.) Whenever it is represented by the council of any county or borough to the Local Government Board—

(*a*.) That the alteration of the boundary of any county or borough is desirable ; or

(*b*.) That the union, for all or any of the purposes of this Act, of a county borough with a county is desirable ; or

(*c.*) That the union, for all or any of the purposes of this Act, of any counties or boroughs or the division of any county is desirable; or

(*d.*) That it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough; or

(*e.*) That the alteration of the boundary of any electoral division of a county, or of the number of county councillors and electoral divisions in a county, is desirable; or

(*f.*) That the alteration of any area of local government partly situate in their county or borough is desirable;

the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry, and may make an order for the proposal contained in such representation, or for such other proposal as they may deem expedient, or may refuse such order, and if they make the order may by such order divide or alter any electoral division.

This sub-section enumerates the several kinds of representation which may be made by county councils under the last section.

It is difficult to suggest what special reasons may exist to induce the Local Government Board not to entertain a representation. This provision seems to give that Board an absolute discretion as to whether they will entertain a representation or not.

As to local inquiries, see s. 87, *post.*

In the cases (*a*), (*b*), (*c*), and (*d*), the order of the Board is to be provisional. (As to Provisional Orders, see s. 87, *post.*) In other cases the order will be final.

(2.) Provided, that in default of such representation by the council of any county or borough before the first day of November, one thousand eight hundred and eighty-nine, the Local Government Board may cause such local inquiry to be made, and thereupon may make such order as they may deem expedient.

(3.) Provided, that if the order alters the boundary of a county or borough, or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, or for constituting a borough into a county borough, it shall be provisional only, and shall not have effect unless confirmed by Parliament.

See the note to sub-s. (1), *supra.*

(4.) Where such order alters the boundary of a borough, it may, as consequential upon such alteration, do all or any of the following things, increase or decrease the number of the wards in the borough, and alter the boundaries of such wards, and alter the

Sect. 54 (4).

apportionment of the number of councillors among the wards, and alter the total number of councillors, and in such case make the proportionate alteration in the number of aldermen.

This provision is obviously necessary when a borough is divided into wards.

(5.) At any time before the appointed day the Local Government Board may make an order in pursuance of this section without any such representation as in this section mentioned.

Contents of Provisional Order amalgamating two county boroughs.

55.—(1.) Where the Local Government Board make a provisional order for uniting two county boroughs, such order may make them one borough and one county for the purposes of this Act.

Such a Provisional Order may be made under s. 54, sub-ss. (1) and (3), *ante*.

(2.) Such order and also any other order under this Act for uniting boroughs, whether county boroughs or not, may also contain such provisions as may seem necessary or proper for regulating the division of the combined borough into wards, the number of councillors to be elected for each ward, and the first election of the council of the combined borough, and for providing for the clerks of the peace, coroners, town clerks, and officers of the boroughs, and the application to them of the provisions of this Act as to existing officers, and for providing for all matters incidental to or consequential on the union of the boroughs.

An order for uniting boroughs may be made under s. 54, sub-ss. (1) and (3), *ante*.

The provisions of this Act as to existing officers are contained in ss. 118—120, *post*.

(3.) When any such provisional order is confirmed, it shall be lawful for Her Majesty to grant a commission of the peace and court of quarter sessions to the combined borough in like manner as to any other borough under the Municipal Corporations Act, 1882, and the Provisional Order may contain such provisions as appear necessary or proper for regulating all matters incidental to such grant, and to the changes caused by the union of the boroughs in matters connected with such commission or court or otherwise with the administration of justice.

A Provisional Order must be confirmed by Parliament. See s. 54, sub-s. (3), *ante*.

A commission of the peace is granted to a borough under s. 156 of the Municipal Corporations Act, 1882. A separate court of quarter sessions is granted under s. 162 of the same Act. See s. 37 of this Act as to the effect of such a grant.

Sect. 56.

Procedure for charter of new borough.

56. Where a petition is presented to Her Majesty the Queen by the inhabitant householders of any town or towns or district, in pursuance of the Municipal Corporations Act, 1882, for the grant of a charter of incorporation, notice of such petition shall be given to the county council of the county in which such town, towns, or district is or are situate, and shall also be sent to the Local Government Board, and the Privy Council shall consider any representations made by such county council or the Local Government Board, together with the petition for such charter.

A charter is granted to a new borough under Part XI. of the Municipal Corporations Act, 1882, on petition to the Queen by the inhabitant householders of the district for which the charter is desired. The petition is referred to a committee of the Privy Council, and considered by them after notices have been duly published of their intention to do so. The notice of petition must now be sent to the county council and the Local Government Board, whose representations (if any) must be considered by the committee of the Privy Council along with the petition for the charter.

Future alteration of county districts and parishes and wards and future establishment of urban districts.

57.—(1.) Whenever a county council is satisfied that a *primâ facie* case is made out as respects any county district not a borough, or as respects any parish, for a proposal for all or any of the following things ; that is to say—

(*a.*) The alteration or definition of the boundary thereof ;

(*b.*) The division thereof or the union thereof with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish ;

(*c.*) The conversion of any such district or part thereof, if it is a rural district, into an urban district, and if it is an urban district, into a rural district, or the transfer of the whole or any part of any such district from one district to another, and the formation of new urban or rural districts ;

(*d.*) The division of an urban district into wards ; and

(*e.*) The alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any district council, or of the apportionment of such members among the wards,

the county council may cause such inquiry to be made in the locality, and such notice to be given, both in the locality and to the Local Government Board, Education Department, or other Government Department as may be prescribed, and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

For the definition of a county district, see s. 100, *post*. The effect of the creation of a district under this section is the same as if it had been created

Sect. 57 (1) under the Public Health Act, 1875. See *R.* v. *Overseers of Barnes*, 13 T. L. R. 25.

NOTE.

This section applies to the alteration of boundaries of urban districts (other than boroughs), rural districts, and parishes, the establishment of urban districts, and the creation or alteration of wards in urban districts.

The existing powers for the alteration, etc., of parishes are those of the Local Government Board under the Acts mentioned in the note to sub-s. (7), *infra*.

Urban districts were formerly created by the Local Government Board under the provisions of the Public Health Act, 1875, s. 270. The board have also power to divide urban districts into wards under s. 271, and to define boundaries under s. 272 of the same Act. The powers of the Local Government Board under that Act are not taken away, but they are not now exercised, and probably may be regarded as superseded by the text.

As to the effect of the extension of an urban district in reference to the rights of supplying water in the added area, see *Huddersfield Corporation* v. *Ravensthorpe Urban District Council*, referred to in the note to s. 59 (4), *infra*.

The "prescribed" notices to Government Departments are those prescribed by the Local Government Board under s. 87, sub-s. (4), *post*.

The Order of the Local Government Board dated September 14th, 1889, which is set out, *post*, contains the regulations at present in force as to the notices to be given under this section.

The order under this sub-section is made by the county council, subject, however, to the provisions contained in the following sub-sections. See also as to these orders, ss. 59 and 60, *infra*.

Further powers of making orders under this section have been conferred on county councils by the Local Government Act, 1894; see in particular Part III. of that Act, *post*. That Act also gives power to the county council as to the establishment and dissolution of parish councils, the grouping of rural parishes under a common parish council, and other matters.

(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, and otherwise as the county council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the members among the wards, shall come into operation upon being finally approved by the county council.

The "prescribed manner" means as the Local Government Board may prescribe. See s. 87, sub-s. (4), *post*.

After the notices here referred to have been given, the order, if it relates to the matters above specified, must be again approved by the county council, and it will then come into operation at once. The cases mentioned are those specified in sub-s. (1) (*d*) and (*e*). The order of the Local Government Board of September 14th, 1889, *post*, provides for the manner in which the final approval is to be given.

(3.) In any other case the order shall be submitted to the Local Government Board; and if within three months after such notice of the provisions of the order as the Local Government Board determine to be the first notice, the council of any district affected by the order, or any number of county electors registered in that

district or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, and determine whether the order is to be confirmed or not.

"In any other case" means in any of the cases mentioned in sub-s. (1) (*a*) (*b*) and (*c*). The order of the Local Government Board already referred to provides that the first advertisement in pursuance thereof shall be deemed to be the first notice for the purposes of this sub-section.

The period of three months limited by this sub-section for petitioning is reduced to six weeks by s. 41 of the Local Government Act, 1894. During that period the order will be of no effect. If petitioned against as here provided, the Local Government Board must hold a local inquiry under s. 87. After such inquiry the Board may refuse to confirm the order, or they may confirm it with modifications. See sub-s. (5), *infra*.

The expression "district" in this sub-section appears to mean "county district," as defined by s. 100, *post*.

It may be mentioned that in all cases in which it is necessary that boundaries should be defined in an order to be confirmed by them, the Local Government Board prefer that the definition should be by reference to a map only, without verbal description.

(4.) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the order.

Observe that this provision is imperative. The Local Government Board have no discretion in the matter. Where an order has been confirmed, it will, at the expiration of six months from such confirmation, be presumed to have been duly made and to be within the powers of this section, and no objection to its legality can be entertained in any legal proceeding. Local Government Act, 1894, s. 42, *post*.

(5.) The Local Government Board, on confirming an order, may make such modifications therein as they consider necessary for carrying into effect the objects of the order.

See the note to sub-s. (3), *supra*.

The Local Government Board may presumably insert in an order by way of modification, any provision which the county council might have inserted in the first instance.

(6.) An order under this section, when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament.

(7.) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.

The powers of the Local Government Board as to the adjustment of parishes

Sect. 57 (7). are conferred by 30 & 31 Vict. c. 106, s. 3; 34 & 35 Vict. c. 70; 39 & 40 Vict c. 61, ss. 1—9; 42 & 43 Vict. c. 54; 45 & 46 Vict. c. 58.

NOTE.

Additional power of Local Government Board as to unions.

58. The Local Government Board, where it appears expedient so to do with reference to any poor law union which is situate in more than one county, instead of dissolving the union may by order provide that the same shall continue to be one union for the purposes of indoor paupers or any of those purposes, and shall be divided into two or more poor law unions for the purpose of outdoor relief, and may by the order make such provisions as seem expedient for determining all other matters in relation to which such union is to be one union or two or more unions.

The Local Government Board has power to alter or dissolve a union under 4 & 5 Will. 4, c. 76, s. 32; 7 & 8 Vict. c. 101, s. 66; 31 & 32 Vict. c. 122, s. 4; 39 & 40 Vict. c. 61, s. 11.

The text enables the Board to divide a union for the purpose of outdoor relief while continuing it as one union for other purposes, such as the workhouse.

The Local Government Act, 1894, s. 36 (6), *post*, provides that where the alteration of a poor law union seems expedient by reason of any of the provisions of that Act, a county council may by their order (under that Act) provide for such alteration in accordance with the provision in the text "or otherwise."

Supplemental provisions as to alteration of areas.

59.—(1.) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient.

This provision applies apparently to any scheme or order under the Act. A scheme for regulating quarter sessions in London may be made under s. 42, sub-s. (7), *ante*, p. 94. Orders may be made under many sections, but see especially ss. 52—57, *ante*.

Provisional orders may be made under ss. 4, 10, 12, 14, 49, 52, 54, 55, and 69.

(2.) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned, form part of that county for all purposes, whether sheriff, lieutenant, *custos rotulorum*, justices, militia, coroner, or other. Provided that—

(*a.*) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act; and

(*b.*) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, militia, justices, or coroner; but, if any county borough is, at the passing of this Act, a part of any

county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose ; and Sect. 59 (2)

(*c.*) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rentcharge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

As to the definition of "administrative county," see s. 100, *post*.

The opening words of the sub-section merely mean that a place "shall form part of such county for the exercise therein of their respective offices by the officers there named ; the section cannot be treated as intended to affect the question of the coroner's appointment," in a liberty which by this Act forms part of the county. *Ex parte London County Council*, [1892] 1 Q. B. 33 ; 61 L. J. Q. B. 27 ; 65 L. T. (N.S.) 614 ; 56 J. P. 279 ; 8 T. L. R. 24.

As to coroners whose district is in two administrative districts, see s. 5, sub-ss. (3), (4), *ante*, p. 16.

(3.) For the purposes of parliamentary elections, and of the registration of voters for such elections, the sheriff, clerk of the peace, and council of the county in which any place is comprised at the passing of this Act, for the purpose of parliamentary elections shall, save as otherwise provided by the scheme or order, or by the County Electors Act, 1888, or this Act, continue to have the same powers, duties, and liabilities as they would have had if no alteration of boundary had taken place. 51 & 52 Vict. c. 10.

(4.) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,—

(*a.*) May provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, *custos rotulorum*, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area ; and

Sect. 59 (4).

(*b.*) May make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and

(*c.*) May provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and

(*d.*) May provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and

(*e.*) May adjust any property, debts, and liabilities affected by the scheme or order.

It is necessary before any order altering areas or boundaries is made to make careful inquiry for the purpose of ascertaining what authorities have jurisdiction within the area affected, in order that overlapping of areas of local government may be avoided: see s. 60, *post*.

The expression "local authority" as used in paragraph (*a*) of this sub-section seems to have a very wide application, and to include not only urban and rural district councils, but parish councils, burial boards, school boards, joint hospital boards, and, in fact, any body which exercises jurisdiction in the area dealt with by the orders. It has been held that the expression includes a burial board, and that a county council may in exercise of its powers under this section alter an area formed under the Burial Acts. *R.* v. *Durham County Council* (WRIGHT and BRUCE, JJ.), January 13th, 1897, reported only in *Local Government Chronicle*, 1897, p. 70. If an order dividing a parish, in the whole of which the Burial Acts were in force, does not expressly provide for the alteration of the Burial Acts area, that area will, it seems, remain unaltered, and to meet the expenses under those Acts, precepts may be issued to the overseers of the new parishes (formed by the division) under 18 & 19 Vict. c. 128, s. 13. *R.* v. *Keighley* (*Overseers of*) (WRIGHT and BRUCE, JJ.), January 11th, 1897, *Local Government Chronicle*, 1897, p. 47.

It is submitted, however, that in such a case the order itself should definitely provide either for the continuance of the old authority, or some substitute for it, over both parts with all proper powers of raising money for expenses and the like, or for the abolition of the jurisdiction of the authority in one of the parts, and its continuance in the other. For instance, where a parish divided by the order has a school board, that board might be kept alive as the school board of a united district comprising the new parishes formed by the division, see Elementary Education Act, 1870, ss. 40 *et seq*; where the old parish has adopted the Burial Acts, recourse may be had to some such expedient as was adopted in s. 53 of the Local Government Act, 1894, *post*, and supplemented by the 60 & 61 Vict. c. 40, *post*.

In *Huddersfield Corporation* v. *Ravensthorpe Urban District Council*, [1897] 2 Ch. 121; 66 L. J. Ch. 581; 76 L. T. (N.S.) 817; 45 W. R. 642; 61 J. P. 596; it was held by the Court of Appeal that the mere extension of their district by an order under s. 57, *ante*, does not give power to an urban district council to supply water in the added area except subject to s. 52 of the Public Health Act, 1875, and LINDLEY, L.J., there

expresses a doubt whether a county council can (by an order under s. 57, *ante*, and this section) interfere with the rights of the existing water authority in the added area under s. 52 of the Public Health Act, 1875. Sect. 59 (4) NOTE.

The division of a district or parish may also involve making provision for the status of each part as a component part of the union or county district.

In every case, any necessary provision should be made for the continuance in office of existing representatives and for the election of future members.

It will be necessary to extend the provisions of a local Act in the case of the extension of an urban district in which the local Act is in force.

The provisions of this Act as to existing officers are contained in s. 120, *post*. The Local Government Board generally require some provision as to existing officers to be made in every order. This provision should clearly specify the fund out of which compensation to existing officers should be paid, otherwise a difficulty may arise as in *West* v. *Wilts County Council*, 10 T. L. R. 19.

As to adjustment, the county council appear to have power by their order to provide for everything to which the parties to the order may agree under s. 62, *post*. In so far as the order does not so provide, it seems that the provisions of s. 62 will apply. See *Sowerby Urban District Council* v. *Mytholmroyd District Council*, 74 L. T. (N.S.) 313; 12 T. L. R. 300.

(5.) Where an alteration of boundaries of a county is made by this Act an order for any of the above-mentioned matters may, if it appears to the Local Government Board desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament.

An alteration of boundaries of a county is made by the Act under ss. 40, 48, 49, 50.

As to provisional orders, see s. 87, *post*.

(6.) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order. Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament, either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act.

Orders must be laid before Parliament under s. 57, sub-s. (6). Provisional orders must in every case be confirmed by Parliament. See s. 87, *post*.

As to what is a local and personal Act within the meaning of this sub-section, see *R.* v. *London County Council*, [1893] 2 Q. B. 455; 63 L. J. Q. B. 4; 69 L. T. (N.S.) 580; 42 W. R. 1; 58 J. P. 21.

60. In every alteration of boundaries effected under the authority of this Act, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government. General provision as to alteration of boundaries

Areas of local government include unions, urban and rural districts, parishes, and similar areas.

Sect. 60.
NOTE.

The Local Government Act, 1894, s. 36, *post*, contains more explicit directions as to the avoidance of the overlapping of boundaries of areas of local government.

Appointment of commissioners.

61.—(1.) For the purposes of this Act the Right Honourable Edward Henry, Earl of Derby, the Right Honourable George John Shaw-Lefevre, John Lloyd Wharton, Esquire, Francis Mowatt, Esquire, C.B., and Joseph J. Henley, Esquire, shall be appointed Commissioners.

(2.) If a vacancy occurs in the office of any of the Commissioners by reason of death, resignation, incapacity, or otherwise, it shall be lawful for Her Majesty the Queen, under Her Royal Sign Manual, to appoint some other person to fill the vacancy, and so from time to time as often as occasion requires.

(3.) The Commissioners may from time to time, with the assent of the Treasury as to number, appoint or employ such number of officers and persons as they may think necessary for the purpose of the execution of their duties under this Act, and may remove any officer or person so appointed or employed.

(4.) There shall be paid to any officer or person appointed or employed under this section, such salaries or other remuneration as the Treasury may assign, and that remuneration and all expenses of the Commissioners, incurred with the sanction of the Treasury in the execution of this Act, shall be paid out of moneys provided by Parliament.

(5.) On holding any inquiry for the purposes of this Act, any Commissioner or officer of the Commissioners shall have the same powers as an inspector of the Local Government Board has on holding a local inquiry under the Public Health Act, 1875.

38 & 39 Vict. c. 55.

(6.) There shall be paid to the Commissioners by the councils of the counties and county boroughs whose financial relations are adjusted by the Commissioners in pursuance of this Act, such amounts as the Treasury may fix as necessary for the payment of the costs of such adjustment, including a proper share of the salaries and remuneration of the officers and persons appointed or employed by such Commissioners, and such amounts shall be paid into the Exchequer, and the amount so paid shall be included as part of the adjustment.

(7.) The authority of the Commissioners shall extend to the settlement and the determination by them, on such terms and in such manner as they, in their absolute discretion, think most just and fit, of the matters referred to them, and also of all such matters and questions as are, in their judgment, incident thereto or consequent thereon, to the end that their award or awards may effect a final settlement, and until a final settlement is made the authority of the Commissioners shall extend to determine the proportions in which payments are to be made to the councils of

counties and county boroughs out of the Local Taxation Account, and all payments so made shall be taken into account in the making of the adjustment. Sect. 61 (7).

(8.) Every award, order, and other instrument made by or proceeding from the Commissioners, shall be binding and conclusive to and for all intents and purposes, and shall have the like effect as if it had been made by a judge of the High Court of Justice in England, and shall be acted on, obeyed, executed, and enforced by all sheriffs and other officers and persons accordingly. No such award, order, or other instrument shall be removable by any writ or process into any of Her Majesty's Courts, and the Commissioners proceedings or acts shall not be liable to be interfered with or questioned by or in any court, or elsewhere, by way of mandamus, prohibition, injunction, or otherwise.

(9.) The costs of and attending the inquiry and award shall be borne and paid by the parties out of the fund or rate applicable to their general expenses, in such proportions as the Commissioners may direct, and the Commissioners may order the taxation of any costs in such manner as they may see fit.

(10.) The powers of the Commissioners shall, unless continued by Parliament, cease on the last day of December, one thousand eight hundred and ninety.

The powers of the Commissioners were kept in force by the Expiring Laws Continuance Acts, 1890 and 1891, but finally expired on June 30th, 1892. The final report of the Commissioners as to their proceedings is set out, *post*.

Adjustment of property and liabilities

62.—(1.) Any councils and other authorities affected by this Act or by any scheme, order, or other thing made or done in pursuance of this Act, may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities, and expenses, so far as affected by this Act or such scheme, order, or thing, of the parties to the agreement, and the agreement and any other agreement authorised by this Act to be made for the purpose of the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred and retained, or of such joint user, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the commissioners under this Act or the Local Government Board.

This provision gives to councils and other authorities very wide powers as

Sect. 62 (1). to agreements for the adjustment of property, etc., when that is necessary under this Act.

NOTE. It is not quite clear that a mere transfer of rateable value from one authority to another renders an adjustment necessary. The Act contains no provision applicable to such a transfer similar to that contained in s. 32 (3), *ante*, p. 69.

But as what matters require adjustment where local areas have been altered under this Act or the Local Government Act, 1894, see *Re Rochdale Union and Haslingden Union*, Times, May 21st, 1898.

In a case stated under s. 29, *ante*, the court has no jurisdiction to decide questions of adjustment of liabilities under this section. *Re Salop County Council*, 65 L. T. (N.S.) 416.

(2.) In default of an agreement as to any matter requiring adjustment for the purpose of this Act, or any matter which, in case of difference, is to be referred to arbitration, then, if no other mode of making such adjustment or determining such difference is provided by this Act, such adjustment or difference may be made or determined by an arbitrator appointed by the parties, or in case of difference as to the appointment, appointed by the Local Government Board.

Where an order of a county council has not in fact provided for adjustment, although such order might have done so under s. 59 (4) (*e*), *ante*, an arbitrator may be appointed under this sub-section to make the adjustment. *Sowerby Urban District Council* v. *Mytholmroyd Urban District Council*, 74 L. T. (N.S.) 313 ; 12 T. L. R. 300.

(3.) An arbitrator appointed under this Act shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly ; and, further, the arbitrator may state a special case, and notwithstanding anything in the said Acts, shall determine the amount of the costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

8 & 9 Vict. c. 18.

The Lands Clauses Acts, in so far as they relate to arbitration, are 8 Vict. c. 18, ss. 23, 25—37 ; 32 & 33 Vict. c. 18 ; 46 Vict. c. 15. These Acts will be found in the Appendix to Lumley's Public Health. An arbitrator under this Act will, however, have the further powers above mentioned, viz., to state a case, to determine and disallow costs. By the text he is required, and not merely empowered, to decide as to the costs.

(4.) Any award or order made by the Commissioners or any arbitrator under this Act may provide for any matter for which an agreement might have provided.

As to what might have been provided for by agreement, see sub-s. (1), *supra*.

(5.) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the Commissioners, or an arbitrator under this Act, may be paid out of the county or borough fund or out of such other special fund as the council, with the

approval of the Commissioners under this Act or of the Local Government Board, may direct. Sect. 62 (5).

(6.) The payment of any capital sum required to be paid for the purposes of the adjustment, or of an agreement under this Act, or of any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act, 1882, or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock or in any other manner in which they are for the time being authorized to borrow, and such sum may be borrowed without the consent of the Treasury, or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in Part Four of this Act for paying off a loan, or, if the sum is raised by stock under a local Act, by such method as is directed by that Act.

The reference in the text to borrowing "under this Act," raises a doubt whether this borrowing power extends to district councils as well as to county councils, but having regard to the section as a whole it is probable that district councils are empowered by this clause to borrow for the purpose of settling claims for adjustment. The borrowing will be in accordance with the provisions of the Public Health Act, 1875, as to borrowing by sanitary authorities; the repayment of the loan must be made in accordance with the provisions of s. 69, *post*, as to repayment.

The power of a county council to borrow under this Act depends upon s. 69, *post*.

As to borrowing by a borough council under the Municipal Corporations Act, 1882, see s. 72, *post*, which substitutes the Local Government Board for the Treasury. No consent will be required for borrowing for the purpose above mentioned if the loan is made repayable within a period prescribed by the Local Government Board, by a method mentioned in s. 69, *post*, or in manner prescribed by a local Act.

(7.) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act, shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt, or for any other purpose for which capital money may be applied.

The sanction of the Local Government Board will be necessary for any application of this capital sum. See s. 69, sub-s. (3), *post*.

Arbitration by Local Government Board. 31 & 32 Vict. c. 119.

63. Where the local Government Board *are required in pursuance of this Act to decide* any difference or other matter referred to arbitration in pursuance of this Act, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions,

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shall apply as if they were herein re-enacted, and in terms made applicable to the Local Government Board and the decision of differences and matters under this Act.

It is provided by the Local Government (Determination of Differences) Act, 1896 (59 Vict. c. 9), s. 1, *post*, that the Local Government Act, 1888, shall have effect as if in s. 63 of that Act for the words "are required in pursuance of this Act to decide" were inserted the words "determine as arbitrators."

This enactment appears to have been rendered necessary by the decision in *Kent County Council* v. *Sandgate Local Board*, [1895] 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. (N.S.) 725; 43 W. R. 601; 59 J. P. 456; 11 T. L. R. 421. See the note to s. 11, sub-s. (3), *ante*.

The provisions of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), here referred to are contained in ss. 30—32 of that Act. Under these, as applied by the above section, the Local Government Board may appoint an arbitrator, whose award or decision shall be that of the Board. The Board may fix the remuneration of the arbitrator.

Section 32 of the Act of 1868 incorporates the Railway Companies Arbitration Act, 1859, ss. 18—29, the effect of which is shortly as follows:—

Section 18 empowers the arbitrator to call for books and documents and administer oaths; s. 19 gives him discretion as to the manner of proceeding with the arbitration; s. 20 enables him to proceed in the absence of parties; s. 21 enables him to make several awards each on part of the matters referred; s. 22 makes the award conclusive; s. 23 gives the arbitrator power to extend the time for making an award; s. 24 prevents the setting aside of an award for irregularity; s. 25 provides that parties shall obey awards; s. 26 that all courts shall give effect to awards; s. 27, that costs shall be in the discretion of the arbitrator; and s. 28, that in absence of order costs are to be borne by parties equally; s. 29, that submission may be made a rule of court.

PART IV.

FINANCE.

Property Funds and Costs of County Council.

Transfer of county property and liabilities.

64.—(1.) On and after the appointed day all property of the quarter sessions of a county, or held by the clerk of the peace, or any justice or justices of a county, or treasurer, or commissioners, or otherwise for any public uses and purposes of a county, or any division thereof, shall pass to and vest in and be held in trust for the council of the county, subject to all debts and liabilities affecting it, and shall be held by the county council for the same estate, interest, and purposes, and subject to the same covenants, conditions, and restrictions, for and subject to which that property is or would have been held if this Act had not passed so far as those purposes are not modified by this Act. Provided that—

(*a.*) The existing records of or in the custody of the court of quarter sessions shall, subject to any order of that court, remain in the same custody in which they would have been if this Act had not passed; and

(*b.*) Where any property belongs to a charity, nothing in this Act shall affect the trust of such charity, and until otherwise directed by the Charity Commissioners for England and Wales, the trustees or managers of the charity shall be appointed in like manner as if this Act had not passed; and

(*c.*) The justices of any county may retain any pictures, chattels, or property on the ground that the same have been presented to them or purchased out of their own funds or otherwise belong to them, and are not held for public purposes of the county, and any difference arising between the county council and the justices with respect to any such retention shall be referred to and determined by the Commissioners under this Act.

For the definition of the expressions "property," "liabilities," "division," etc., see s. 100, *post*.

As to the "appointed day," see s. 109, *post*.

The records of the county are in the custody of the *custos rotulorum* or of the clerk of the peace, who was formerly appointed by him. See now as to the appointment of the clerk of the peace and his duties as to the custody of documents, s. 83, *post*.

The saving as to pictures, chattels, etc., is intended to preserve to the justices property which may have been presented to them or are not held for public purposes.

The justices of a county, as the local authority for the county, neglected between the years 1869 and 1878 to recoup to the plaintiffs, as the local authority for a borough within the county, the proportionate amount contributed by the borough to the expenses incurred by the local authority of the county, in carrying out the provisions of the Contagious Diseases (Animals) Act, 1869, which they were bound to repay under s. 97 of that Act. After the passing of the Local Government Act, 1888, the plaintiffs sued the defendants, as successors of the local authority for the county, to recover the sums which should have been recouped. Held, that the only remedy against the justices would have been by *mandamus* to them to pay the amounts claimed out of moneys in their hands, or to levy a rate for the purpose; and that, as the Local Government Act, 1888, vests in the county council the property of the justices for the county subject to the same conditions and restrictions as if the Act had not been passed, the defendants were not liable in the action. Held, also, that if any action would lie it would be an action on the case and not an action for debt on a statute, and therefore the Statute of Limitations was a bar to the claim. *Salford (Mayor, etc., of)* v. *Lancashire County Council*, 25 Q. B. D. 384; 59 L. J. Q. B. 576; 63 L. T. (N.S.) 409; 38 W. R. 661; 54 J. P. 328; 6 T. L. R. 362.

In pursuance of a resolution passed by the watch committee of a borough incorporated under the Municipal Corporations Act, 1835, the justices of the county provided police for the borough from 1869 to 1887. The expenses of such police for each half year were provided for in advance by a rate levied on the borough, and the sum so raised was, together with the sums collected from the other townships of the union in which the borough was situate, paid to the county treasurer by the guardians of the union in obedience to a precept addressed to them by the county justices. By the Municipal Corporations

Sect. 64 (1). Note. Act, 1835, the watch committee were required to appoint police for the borough, and on June 30th, 1887, they withdrew the county police and appointed borough constables. At this date the county justices had in their hands a sum arising from a rate levied on the borough applicable for the future expenses of the police in the division in which the borough was situate, but there was no ascertained sum applicable exclusively to the police provided for the borough. In an action by the mayor and corporation (suing on behalf of all the ratepayers of the borough) and the guardians of the union against the council of the county, as successors of the county justices, to recover the amount overpaid by the borough :—Held, first, that the plaintiffs were not entitled to represent the ratepayers of the borough; secondly, that the remedy against the defendants (if any) was by *mandamus*; thirdly, on the merits that the money was not recoverable on the ground of extortion *colore officii*, as it was paid under a voluntary arrangement; nor on the ground of a partial failure of consideration, as the proportion overpaid was not properly ascertainable. *Bootle (Mayor, etc., of)* v. *Lancashire County Council*, 60 L. J. Q. B. 323; 7 T. L. R. 179.

The committee of visitors of a lunatic asylum which was built and managed under the provisions of the Lunatic Asylums Act, 1853 (now repealed), had in their hands a sum of money, being the excess of receipts over the cost incurred in maintaining lunatics committed to them. Three classes of lunatics were committed to the asylum, namely, lunatics from unions within the county, lunatics from unions in other counties, and private patients. The questions to be decided were, whether the committee of visitors (the plaintiffs), or the county council (the defendants), who, under the Local Government Act, represented the interests of the quarter sessions, should have the control of the above-mentioned sum of money, and whether any part of this sum should be credited to the unions, the other defendants in the action, from whose payments it had partly arisen :—Held, that the guardians of several unions had no claim to the funds, but that as between the committee of visitors and the county council, whose predecessors had provided the money to build the asylum, the county council were entitled. *Proctor* v. *Cheshire County Council*, 56 J. P. 532.

By an agreement between a private owner of certain rooms and the clerk of the peace, as trustee for the justices in quarter sessions, the justices in quarter sessions were permitted to use the rooms for the purpose of transacting their duties in quarter sessions free of charge :—Held, that the use of the rooms by the county council, free of charge, was not transferred by s. 64 of the Local Government Act, 1888, to the county council. *Montgomeryshire County Council* v. *Pryce-Jones*, 57 J. P. 308; 8 T. L. R. 754.

(2.) On and after the appointed day all debts and liabilities of the quarter sessions, or of the clerk of the peace, or any justice or justices, or treasurer, or commissioners, incurred for county purposes, shall become debts and liabilities of the county council, and shall, subject to the provisions of this Act, be defrayed by them out of the like property and funds out of which they would have been defrayed if this Act had not passed.

(3.) The county council shall have full power to manage, alter, and enlarge, and, with the consent of the Local Government Board, to alienate any land or buildings transferred by this section, or otherwise vested in the council, but shall provide such accommoda-

tion and rooms, and such furniture, books, and other things as may from time to time be determined by the standing joint committee of quarter sessions and the county council, to be necessary or proper for the due transaction of the business, and convenient keeping of the records and documents, of the quarter sessions and justices out of sessions, or of any committee of such quarter sessions or justices.

This clause applies to any land or buildings vested in a county council, not only to those transferred from the quarter sessions.

Notwithstanding the provision in the text, the standing joint committee have under s. 30 (3), *ante*, exclusive control of buildings and premises for the accommodation of quarter sessions or justices out of session or for the use of the police or clerks to justices. See *Ex parte Somersetshire County Council*, 58 L. J. Q. B. 513 ; 68 L. T. (N.S.) 512 ; 54 J. P. 183 ; 5 T. L. R. 712.

The consent of the Local Government Board is necessary for the alienation of the lands of a county council. As to the proceeds of any sale, see s. 65, sub-s. (3), *post*. It will be observed that no distinct leasing power is given ; but perhaps the power to "alienate" may be said to include such a power. The leasing power given by s. 65, *post*, does not appear to apply to land transferred under this section from the quarter sessions.

As to the rating of a sessions house used by a county council and quarter sessions jointly, see *Middlesex County Council* v. *St. George's, Hanover Square*, [1897] 1 Q. B. 64 ; 66 L. J. Q. B. 101 ; 75 L. T. (N.S.) 464 ; 45 W. R. 215 ; 61 J. P. 38 ; *Worcestershire County Council* v. *Worcester Union*, [1897] 1 Q. B. 480 ; 66 L. J. Q. B. 323 ; 76 L. T. (N.S.) 138 ; 45 W. R. 309 ; 61 J. P. 244.

(4.) This section shall apply, with the necessary modifications, to the administrative counties of Sussex and Suffolk.

As to these administrative counties, see s. 46, *ante*, p. 99.

(5.) This section shall apply in the case of the property, debts, and liabilities of the justices of all the ridings and divisions of the counties of York or Lincoln at their gaol sessions, or of commissioners appointed by the justices, in like manner as if it were herein re-enacted with the substitution of gaol sessions or commissioners for quarter sessions, and of clerk of gaol sessions for clerk of the peace, and as if the joint committee of the councils of the three ridings or divisions were the council of the county ; and the said joint committee shall, for the purposes of the said property, debts and liabilities, and for the transaction of the administrative business and execution of their duties under this Act, be a body corporate, with perpetual succession and a common seal, by the name of the county committee, with the prefix of the name of the county, and with power to acquire and hold land for the purposes of their constitution without licence in mortmain.

As to the gaol sessions in these counties, see note to s. 46, sub-s. (2), *ante*, p. 100.

The joint committees are the corporate bodies known as the Yorkshire County Committee and the Lincolnshire County Committee.

(6.) The county council of the soke of Peterborough shall be liable to repair the county bridges in the soke, and if any costs are

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As to the soke of Peterborough and the residue of the county of Northampton, see s. 46, *ante*, p. 99.

As to arbitration under this Act, see s. 62, *ante*, p. 119.

Power to acquire lands.

65.—(1.) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county.

Existing county buildings passed to county councils under the last section, subject, however, to the right of the quarter sessions or justices to use them for the holding of courts. See s. 30, sub-s. (3), *ante*, p. 66.

As to the standing joint committee, see s. 30, *ante* p. 66.

It should be mentioned that the county council have, by s. 3 (iv.), all the powers formerly possessed by the quarter sessions of providing shire halls, county halls, etc., subject as to the use of buildings by the quarter sessions and justices to the provisions of the Act respecting the standing joint committee.

Observe that the lands, etc., acquired may be within or without the county.

Express powers of acquiring land for various purposes are conferred upon county councils by several of the Acts set out in Part III. of this work.

(2.) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

"Such lands" must, it seems, mean lands acquired under sub-s. (1): the powers here given are not expressed to extend to lands transferred from the quarter sessions under s. 65, *ante*. It will be observed that a power of leasing is given by the incorporation of s. 177 of the Public Health Act, 1875, though it does not appear how such a power can be exercised "for the purpose of the purchase, etc., of such lands." The incorporated sections of the Public Health Act are as follows:—

"176. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed; (that is to say,)

"(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845:

"(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature

of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

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Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands:

"(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees, and occupiers of lands who have assented, dissented, or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires:

"(4.) On the receipt of such petition, and on due proof of the proper advertisements having been published and notices served, the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof:

"(5.) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served:

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more of such persons on behalf of all such persons.

"177. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

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"178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice to the rights of any lessee, tenant, or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty, her heirs or successors in right of the said duchy, or any right, interest, or easement in, through, over, or on any such lands which, for the purposes of this Act, such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855."

(3.) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such manner as the said Board sanction towards the discharge of any loan of the council, or otherwise for any purpose for which capital may be applied by the council.

The consent of the Local Government Board to the sale of any land of a county council is required by s. 64, sub-s. (3), *ante*, p. 124.

The sanction of the Board will be necessary for any appropriation of the proceeds of sale.

Costs of justices to be payable out of county fund.

66. All costs incurred by the quarter sessions or the justices out of session of a county, and all costs incurred by any justice, police officer, or constable, in defending any legal proceedings taken against him in respect of any order made, or act done, in the execution of his duty as such justice, police officer, or constable shall, to such amount as may be sanctioned by the standing joint committee of the county council and quarter sessions, and, so far as they are not otherwise provided for, be paid out of the county fund of the county, and the council of the county shall provide for such payment accordingly.

This section was probably inserted in the Act having regard to the case of *Stops* v. *Northamptonshire JJ.*, 4 T. L. R. 78, where it was held that the justices of a county cannot lawfully pay out of the county funds the costs and damages incurred by the chief constable of the county in an action brought against him in respect of acts done in the execution of his duty.

The Municipal Corporations Act, 1882, contains a somewhat similar provision enabling a borough council to pay costs or damages in any action against one of their officers, agents, or servants. This provision is contained in s. 226, sub-s. (3), of that Act, which is incorporated with this Act, and therefore applies to county councils. See the section and the notes thereto, *post*.

Adjustment of law as respects costs ordered by

67. Any order of a court of quarter sessions, or of any justices or justice out of session, for the payment by the county treasurer of costs in criminal proceedings or of costs under the Act of the

forty-eighth year of the reign of King George the Third, chapter seventy-five, shall be obeyed by the county treasurer in like manner as heretofore, and the county council shall cause the treasurer, or some other person on his behalf, to attend at every court of quarter sessions for the purpose of paying such sums as may be ordered by the court to be so paid.

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quarter sessions or justices to be paid.

By 7 Geo. 4, c. 64, s. 22, the court before which any person is tried for any felony is empowered to order payments to the prosecutor of his costs and expenses in preferring the indictment, and to the prosecutor and the witnesses for the prosecution of such sums as shall seem sufficient and reasonable to reimburse them for the expenses they may have incurred in attending before the examining magistrates and the grand jury, and in otherwise carrying on the prosecution, and also to compensate them for their trouble and loss of time therein; and such order may be made where any person shall have *bonâ fide* attended in obedience to recognizance or subpœna, though no indictment is preferred. The amount of the expenses of attending before the magistrates is to be ascertained by the certificate of the magistrates, and the other expenses by the proper officer of the court. By s. 23, the court is empowered to make a similar order in certain specified cases of misdemeanor. By s. 24 the order for payment is to be made upon the county treasurer, who is authorized and required to pay the amount and is to be allowed the same in his accounts. By s. 25 all sums ordered to be paid under the Act in respect of felonies or misdemeanors committed in liberties, franchises, cities, towns and places, which do not contribute to the county rate, are to be paid out of the rate in the nature of a county rate, or out of any fund applicable to similar purposes where there is such a fund, by the treasurer or other officer having the collection or disbursement of such rate or fund, and where there is no such rate or fund, out of the poor rate by the overseers, and the order of the court is to be directed to the treasurer, officer or overseers, and not to the county treasurer. By 14 & 15 Vict. c. 55, s. 2, the provisions of the former statute were extended to certain other specified misdemeanors. By s. 5 the Secretary of State is to make regulations as to the scale of costs to be granted to prosecutors and witnesses. By 29 & 30 Vict. c. 52, s. 1, magistrates were empowered to grant a certificate for costs and expenses of prosecutors and witnesses in any case of felony or of one of the specified misdemeanors mentioned in 7 Geo. 4, c. 64, s. 23, or 14 & 15 Vict. c. 55, s. 2, though there might be no committal for trial; by s. 3 such certificates are to be forwarded by the clerks of the peace, and laid before quarter sessions, who may allow the amount wholly or partially and make orders on the treasurer, etc., for payment as under 7 Geo. 4, c. 64. By 30 & 31 Vict. c. 35, the provisions of the preceding Acts were extended to the expenses of witnesses for the defence who were bound over to appear at the trial. In addition to the misdemeanors specified in 7 Geo. 4, c. 64, and 14 & 15 Vict. c. 55, the costs of the prosecution are to be allowed as in cases of felony in misdemeanors under 14 & 15 Vict. c. 19, s. 14; 24 & 25 Vict. c. 96, s. 121; 24 & 25 Vict. c. 97, s. 77; 24 & 25 Vict. c. 98, s. 54; 24 & 25 Vict. c. 99, s. 42; 24 & 25 Vict. c. 100, ss. 74, 77; 32 & 33 Vict. c. 62, s. 17; 35 & 36 Vict. c. 33, s. 24; 48 & 49 Vict. c. 69, s. 18; 52 & 53 Vict. c. 52, s. 4; 52 & 53 Vict. c. 69, s. 5; 57 & 58 Vict. c. 41, s. 20; also in cases of indictable offences dealt with summarily under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 17, 28, 50.

The 48 Geo. 3, c. 75, provides that the overseers shall bury any dead bodies cast up by the sea, and that their expenses shall be reimbursed by the county

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treasurer on the order of a justice. The provisions of that Act are extended by 49 Vict. c. 20, to the burial of any dead human bodies found in or cast on shore from any tidal or navigable waters, and to any such body found floating or sunken in any such waters and brought on to the shore or bank thereof. The last-mentioned Act was passed in consequence of the decision in *Woolwich (Overseers of)* v. *Robertson*, 6 Q. B. D. 654 ; 50 L. J. M. C. 87.

As to the form of the order under 48 Geo. 3, c. 75, see *R.* v. *Treasurer of the County of Kent*, 22 Q. B. D. 603 ; 58 L. J. M. C. 71 ; 60 L. T. (N.S.) 426 ; 37 W. R. 619 ; 53 J. P. 279.

Funds of county council.

68.—(1.) All receipts of the county council, whether for general or special county purposes, shall be carried to the county fund, and all payments for general or special county purposes shall be made in the first instance out of that fund.

General and special county purposes are defined in the subsequent sub-sections of this section.

(2.) In this Act the expression "general county purposes" means all purposes declared by this or any other Act to be general county purposes, and all purposes for contributions to which the county council are for the time being authorized by law to assess the whole area of their administrative county, and the expression "general county account" means the account of the county fund to which the contributions so raised are carried, and any costs incurred for a general county purpose shall be general expenses, and all costs incurred by the county council in the execution of their duties which are not by law made special expenses shall be general expenses.

Purposes declared by this Act to be general county purposes are found in s. 11, sub-s. (2), s. 23, sub-s. (2), s. 25, sub-s. (2), s. 35, sub-ss. (3), (5), s. 41, sub-s. (5), s. 42, sub-s. (3), s. 75, sub-s. (17), s. 76, sub-s. (4).

Where main roads are repairable by hundreds under s. 11 (13), *ante*, the expenses of maintenance are general county purposes under this section. See *R.* v. *Dolby*, [1892] 2 Q. B. 736 ; 61 L. J. Q. B. 826 ; 67 L. T. (N.S.) 619.

Other Acts declare various expenses to be expenses incurred for general county purposes. See, for instance, the Allotments Act, 1890 (53 & 54 Vict. c. 65), s. 6, *post* ; the County Councils Association Expenses Act, 1890 (53 Vict. c. 3), *post*.

(3.) In this Act the expression "special county purposes" means any purposes from contribution to which any portion of the county is for the time being exempt, and also includes any purposes where the expenditure involved is by law restricted to a hundred, division, or other limited part of the county, and the expression "special county account" means any account of the county fund to which contributions for special county purposes are carried, and any costs incurred for a special county purpose shall be special expenses.

(4.) If the moneys standing to the general county account of the county fund are insufficient to meet the expenditure for general county purposes, county contributions may be levied to meet the deficiency on the whole administrative county, and shall be assessed on all the parishes in the county.

(5.) If the moneys standing to any special county account of the county fund are insufficient to meet the expenditure for the special county purposes chargeable to that account, county contributions may be levied to meet the deficiency on any parishes in the county liable to be assessed to county contributions for those purposes.

(6.) Any precept for county contributions may include as separate items a contribution for general county purposes, and a contribution for any special county purpose or purposes, and subject as in this or any other Act mentioned, county contributions, whether for general or special county purposes, which are liable to be assessed on the parishes, shall be assessed on such parishes in proportion to the annual value thereof, as determined by the standard or basis for the county rate, and all enactments applying to such standard or basis or to county rate shall (save as altered by this Act) apply so far as may be consistently with the tenor thereof, to county contributions, and those enactments shall extend to all parishes within any borough which are liable under this Act to be assessed to county contributions.

As to the preparation of the standard or basis for the county rate, see s. 3 (i.), *ante*, p. 5. See also s. 33, *ante*, p. 72.

(7.) The county council shall keep such accounts as will prevent the whole administrative county from being charged with expenditure properly payable by a portion only of the county, and will prevent any sums raised in a portion only of the county being applied in reduction of expenditure properly payable by the whole or a larger part of the county, and will further secure any such exemption as above in this section mentioned, and will prevent any sums by law specifically applicable to any particular purpose from being applied to any other purpose.

(8.) In determining the amount of expenditure for any particular county purpose, general or special, a proper proportion of the cost of the officers and buildings and establishment of the county council may be added to the expenditure directly expended for that purpose.

The establishment charges are to be apportioned between the general and special county accounts.

(9.) County contributions may be made retrospective in order to raise money for the payment of costs incurred, or having become

Sect. 68 (9). payable at any time within six months before the demand of the contributions.

This provision is similar to that contained in the Public Health Act, 1875, s. 210, as to general district rates. It is intended to prevent the raising of legal objections to county rates on the ground that they are retrospective. It will be remembered that retrospective rates are illegal. See *R.* v. *Read*, 18 L. J. M. C. 164; *R.* v. *Bedlington* (*Overseers of*), 48 J. P. 486.

Borrowing by county council.

69.—(1.) The county council may from time to time, with the consent of the Local Government Board, borrow, on the security of the county fund, and of any revenues of the council, or on either such fund or revenues, or any part of the revenues, such sums as may be required for the following purposes, or any of them, that is to say:

(*a.*) For consolidating the debts of the county; and

(*b.*) For purchasing any land or building any building, which the council are authorized by any Act to purchase or build; and

(*c.*) For any permanent work or other thing which the county council are authorized to execute or do, and the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years; and

(*d.*) For making advances (which they are hereby authorized to make) to any persons or bodies of persons, corporate or unincorporate, in aid of the emigration or colonisation of inhabitants of the county, with a guarantee for repayment of such advances from any local authority in the county, or the government of any colony; and

(*e.*) For any purpose for which quarter sessions or the county council are authorized by any Act to borrow,

but neither the transfer of powers by this Act nor anything else in this Act shall confer on the county council any power to borrow without the consent above mentioned, and that consent shall dispense with the necessity of obtaining any other consent which may be required by the Acts relating to such borrowing, and the Local Government Board, before giving their consent, shall take into consideration any representation made by any ratepayer or owner of property rated to the county fund.

As to borrowing by the London County Council, see s. 40, sub-s. (9), *ante*, p. 90, and the note to s. 70 (2), *post*, p. 136.

The power of borrowing in aid of emigration can only be exercised if a guarantee for repayment is given as provided by the text.

Section 3 (ii.) transfers to the county council the powers of the quarter sessions in respect of the borrowing of money.

The chief purposes for which a county council as successor to quarter sessions may borrow are as follows: Shire halls, county halls, sessions houses,

Sect. 69 (1). NOTE.

and judges' lodgings, 7 Geo. 4, c. 63; 35 & 36 Vict. c. 7; station houses and strong rooms, 3 & 4 Vict. c. 88, s. 12; 38 & 39 Vict. c. 89, s, 40; county bridges, 4 & 5 Vict. c. 49; 8 & 9 Vict. c. 32; 43 & 44 Vict. c. 5; 44 & 45 Vict. c. 14; reformatory and industrial schools, 37 & 38 Vict. c. 47; militia storehouses, 17 & 18 Vict. c. 105.

County councils are also specially empowered to borrow under the Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 274; the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), s. 1; the Small Holdings Act, 1892 (55 & 56 Vict. c. 31), s. 19; the Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68), s. 22; the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 42; the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 12 (2); the Light Railways Act, 1896 (59 & 60 Vict. c. 48), s. 16. See these Acts, *post*.

A county council may also borrow for the purposes of the Allotments Act, 1890 (53 & 54 Vict. c. 65), *post*, on the credit of the sanitary rates of the authority in whose default they act. See s. 4 of that Act.

As to borrowing for the purposes of adjusting property, debts, and liabilities, see *ante*, s. 62 (6).

The consent of the Local Government Board is necessary in all cases where money is borrowed under this section, except in the case of re-borrowing under sub-s. (3), *infra*. The provision as to representations by owners and ratepayers is worthy of attention.

It should be borne in mind that a statutory corporation have no power to borrow except such as is given to them by statute, and that the overdrawing of a banking account may amount to an unauthorized borrowing, in respect of which the auditor may surcharge. See *R.* v. *Reed*, 5 Q. B. D. 483; 49 L. J. Q. B. 600; 42 L. T. (N.S.) 835; 28 W. R. 787.

(2.) Provided that where the total debt of the county council, after deducting the amount of any sinking fund, exceeds, or if the proposed loan is borrowed will exceed, the amount of one-tenth of the annual rateable value of the rateable property in the county, ascertained according to the standard or basis for the county rate, the amount shall not be borrowed, except in pursuance of a provisional order made by the Local Government Board and confirmed by Parliament.

As to provisional orders, see s. 87, *post*.

(3.) A county council may also from time to time, without any consent of the Local Government Board, during the period which was fixed for the discharge of any loan raised by them under this Act or transferred to them by this Act, borrow on the like security such amount as may be required for the purpose of paying off the whole or any part of such loan, or if any part of such loan has been repaid otherwise than by capital money, for re-borrowing the amount so repaid, and for the purpose of this section, "capital money" includes any instalments, annual appropriations, and sinking fund and the proceeds of the sale of land or other property,

Sect. 69 (3). but does not include money previously borrowed for the purpose of repaying a loan.

As to discharging loans out of the proceeds of the sale of land, see s. 65, sub-s. (3), *ante*.

(4.) All money re-borrowed shall be repaid within the period fixed for the discharge of the original loan, and every loan for re-borrowing shall for the purpose of the ultimate discharge be deemed to form part of the same loan as the original loan, and the obligations of the council with respect to the discharge of the original loan shall not be in any way affected by means of the reborrowing.

(5.) A loan under this section shall be repaid within such period, not exceeding thirty years, as the county council, with the consent of the Local Government Board, determine in each case.

(6.) The county council shall pay off every loan either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, and applied in accordance with the Local Loans Act, 1875, and the Acts amending the same.

38 & 39 Vict. c. 83.

The Local Loans Act, 1875, is the 38 & 39 Vict. c. 83. The provisions of that Act as to a sinking fund are contained in ss. 13—16, amended by 48 & 49 Vict. c. 30. These Acts will be found set out in Lumley's Public Health, pp. 1018, 1201.

See further, as to the investment of sinking funds, the Trust Investment Act, 1889 (52 & 53 Vict. c. 32), s. 7.

(7.) Where a loan is raised for any special county purpose, the council shall take care that the sums payable in respect of the loan are charged to the special account to which the expenditure for that purpose is chargeable.

As to special county purposes, see s. 68, sub-s. (3), *ante*, p. 130.

(8.) Where the county council are authorized to borrow any money on loan they may raise such money either as one loan or several loans, and either by stock issued under this Act or by debentures or annuity certificates under the Local Loans Act, 1875, and the Acts amending the same, or, if special reasons exist for so borrowing, by mortgage, in accordance with sections two hundred and thirty-six and two hundred and thirty-seven of the Public Health Act, 1875.

38 & 39 Vict. c. 55.

As to the Local Loans Act, see the note to sub-s. (6), *supra*.

As to the issue of county stock, see s. 70, *post*.

Sections 236 and 237 of the Public Health Act, 1875, are as follows :—

"236. Every mortgage authorized to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment,

and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect. Sect. 69 (8). NOTE.

"237. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds."

(9.) Provided that where a county council have borrowed by means of stock they shall not borrow by way of mortgage except for a period not exceeding five years.

As to borrowing by mortgage, see the last sub-section.

The Local Government Board have expressed the opinion that the above sub-section does not preclude a county council who have issued stock from borrowing temporarily on mortgage any sums which they may have power to raise, and from subsequently issuing stock in respect of the balances of the loans after making provision for the repayment of the loans during the time they are secured by mortgages, such repayment being calculated on the full period sanctioned for the loan.

(10.) Where the county council borrow by debentures such debentures may be for any amount not less than five pounds.

Under the Local Loans Act, 1875, s. 5, a debenture under that Act shall not be issued for a sum less than the sum prescribed by a local Act, or where no sum is prescribed for a sum less than 20*l.*

(11.) The provisions of this section which authorize advances in aid of the emigration or colonization of inhabitants of the county, and borrowing for those advances, except the provisions respecting the total debt, shall extend to the councils of boroughs mentioned in the Third Schedule to this Act.

These are the county boroughs to which ss. 31—34, *ante*, apply.

(12.) Nothing in this section shall be taken to empower the Cheshire County Council to borrow on the security of any revenue estimated to accrue from the surplus funds of the River Weaver Navigation.

70.—(1.) County stock may be created, issued, transferred, dealt with, and redeemed in such manner and in accordance with such regulations as the Local Government Board may from time to time prescribe. Issue of county stock.

These regulations were prescribed by the Local Government Board and

Sect. 70 (1). confirmed under sub-s. (4), *post*, by an Order of the Privy Council of September 26th, 1891. They have been amended by a similar order confirmed August 3rd, 1897. Both orders are set out, *post*.

NOTE.

It may be mentioned that county stock is a trustee investment under the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 1 (*m*).

(2.) Without prejudice to the generality of the above power, such regulations may provide for the discharge of any loan raised by such stock, and in the case of consolidation of debt for extending or varying the times within which loans may be discharged, and may provide for the consent of limited owners and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section, with or without modifications, any enactments of the Local Loans Act, 1875, and the Acts amending the same, and of any Act relating to stock issued by the Metropolitan Board of Works, or by the corporation of any municipal borough.

The Local Loans Acts are 38 & 39 Vict. c. 83, and 48 & 49 Vict. c. 30.

As to the issue of metropolitan consolidated stock, see 32 & 33 Vict. c. 102 ; 33 & 34 Vict. c. 24 ; 34 & 35 Vict. c. 47 ; 38 & 39 Vict. cc. 36, 65 ; 43 & 44 Vict. c. 20 ; 48 & 49 Vict. c. 50 ; 50 & 51 Vict. c. 31 ; 51 & 52 Vict. c. 40.

These Acts, however, have been amended from time to time by the Annual Money Acts of the London County Council, a list of which to the end of the year 1895 will be found in the Index to the Statutes, Appendix VI.

(3.) Such regulations shall be laid before each House of Parliament for not less than thirty days during which such House sits, and if either House during such thirty days resolves that such regulations ought not to be proceeded with the same shall be of no effect, without prejudice nevertheless to the making of further regulations.

(4.) If no such resolution is passed, it shall be lawful for Her Majesty by Order in Council to confirm such regulations, and the same, when so confirmed, shall be deemed to have been duly made and to be within the powers of this Act, and shall be of the same force as if they were enacted in this Act.

Audit of accounts of county council.

71.—(1.) The accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year as defined by this Act, and be in the form for the time being prescribed by the Local Government Board.

As to the local financial year, see s. 73, *post*. As to the form, see note to sub-s. (3) of this section.

(2.) The provisions of the Municipal Corporations Act, 1882, with respect to the return to the Local Government Board of the

accounts of a council of a borough and to the accounts of the treasurer of the borough, and to the inspection and abstract thereof, shall apply to the accounts of a county council, and of the treasurer and officers of such council, and the said provisions respecting the return to the Local Government Board shall extend to the return to that Board of a printed copy of the abstract of the said accounts. Sect. 71 (2).

The provisions of the Municipal Corporations Act, 1882, here referred to are ss. 26—28 and s. 233. They are set out *post*.

As to the accounts of a joint committee and its officers, see s. 81, sub-s. (6), *post*.

(3.) The accounts of a county council, and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under sections two hundred and forty-seven and two hundred and fifty of the Public Health Act, 1875, and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit. Provided that the First Schedule to the District Auditors Act, 1879, shall be modified in manner described in the Second Schedule to this Act. 38 & 39 Vict. c. 55. 42 & 43 Vict. c. 6.

By an Order of the Local Government Board, dated March 16th, 1892, that Board has prescribed the form of financial statement to be submitted to the district auditor by the council of each administrative county, except London. The Order is too long for insertion in this work. It will be found in the Statutory Rules and Orders, 1892, p. 195. A further order as to the form of the financial statement relating to the police pension fund was made by the Board on September 19th, 1892, and will be found in the same volume.

Sections 247 and 250 of the Public Health Act, 1875, are as follows :—

"247. Where an urban authority are not the council of a borough, the following regulations with respect to audit shall be observed, namely,

"(1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor for the union in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Government Board :

"(2.) There shall be paid to such auditor in respect of each audit under this Act such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as

Sect. 71 (3).

such authority from time to time appoint, together with his expenses of travelling to and from the place of audit :

Note.

"(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district ; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever :

"(4.) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers, and receipts, mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward ; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds :

"(5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary ; and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers to appear before him at any such audit, or any adjournment thereof, and to make and sign a declaration as to the correctness of the same ; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings ; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury :

"(6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor ; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances :

"(7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorizing the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made :

"(8.) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors:

Sect. 71 (3). Note.

"(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person:

"(10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

"Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act."

"250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority, shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents and consequences as in the case of such last-mentioned accounts."

The Acts relating to audit by district auditors are the 7 & 8 Vict. c. 101, ss. 32—36; 11 & 12 Vict. c. 91, ss. 4—9; 12 & 13 Vict. c. 103, ss. 9, 11; 29 & 30 Vict. c. 113, ss. 5—7; 42 Vict. c. 6. All these Acts will be found in the Appendix to Lumley's Public Health.

The county accounts are not audited, as formerly, by the county auditors, and the provisions of the Municipal Corporations Act, 1882, relating to borough auditors, do not apply to county councils. See s. 75, sub-s. (16), *post*.

As to the modification of the schedule to the District Auditors Act, 1879, see the second schedule to this Act and the notes thereto, *post*.

It may be mentioned that by the Local Authorities (Expenses) Act, 1887 (50 & 51 Vict. c. 72), "expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board."

Sect. 72.

Adaptation of Part V. of 45 & 46 Vict. c. 50, as to corporate property and liabilities.

72. After the appointed day the Local Government Board shall exercise, as regards any county borough, or other borough, the powers conferred by Part V. of the Municipal Corporations Act, 1882, relating to corporate property and liabilities, as respects the approval of loans and of the alienation of property and other matters therein mentioned, and that part shall, as respects any transactions commenced after the appointed day, be construed as if "Local Government Board" were throughout that part substituted for "Treasury."

This is an amendment of Part V. of the Municipal Corporations Act, 1882. That part is not (save as to one section) incorporated with this Act, and the provision in the text has no real connection with the purposes of this Act.

Local Financial Year and Annual Budget.

Fixing of local financial year and consequent adjustments.

73.—(1.) After the appointed day, not being more than three years after the passing of this Act, the local financial year shall be the twelve months ending the thirty-first day of March, and the accounts of the receipts and expenditure of every county council shall be made up for that year, but until the appointed day the local financial year shall be the twelve months ending the twenty-fifth day of March, and the said accounts shall be made up for that year.

As to the "appointed day," see s. 109, *post*.

Before this section came into operation the local financial year ended on March 25th.

As to making up of the accounts of county councils, see s. 71, *ante*.

(2.) All enactments relating to accounts of local authorities or the audit thereof, or to returns touching their receipts and expenditure, or to meetings, or other matters, shall be modified so far as is necessary for adapting them to the provisions of this section, and the Local Government Board shall from time to time give such orders and make such arrangements as appear to the Board to be necessary or proper for effecting such adaptation, and giving effect to the provisions of this section.

Annual budget of county councils.

74.—(1.) At the beginning of every local financial year, every county council shall cause to be submitted to them an estimate of the receipts and expenses of such council during that financial year, whether on account of property, contributions, rates, loans, or otherwise.

(2.) The council shall estimate the amount which will require to be raised in the first six months and in the second six months of the said financial year by means of contributions.

This sub-section contemplates the making of two county rates, one at the beginning of each half-year.

(3.) If at the expiration of the first six months of such financial year it appears to the council that the amount of the contribution or rate estimated at the commencement of the year will be larger than is necessary, or will be insufficient, the council may revise the estimate and alter accordingly the amount of the contribution or rate. Sect. 74 (3).

PART V.

SUPPLEMENTAL.

Application of Acts.

75. For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882, namely, Part Two, Part Three, Part Four (as amended by the Municipal Elections (Corrupt Practices) Act, 1884), section one hundred and twenty-four, in Part Five, Part Twelve, Part Thirteen, the Second Schedule, Part Two, and Part Three of the Third Schedule, and Part One of the Eighth Schedule shall, so far as the same are unrepealed and are consistent with the provisions of this Act, apply as if they were herein re-enacted with the enactments amending the same, in such terms and with such modifications as are necessary to make them applicable to the said councils, and their chairmen, members, committees, and officers, and to the other provisions of this Act. Application of 45 & 46 Vict c. 50, to county councils and this Act. 47 & 48 Vict. c. 70.

The provisions of these incorporated Acts are set out *post*, and in the notes to each section it has been attempted to indicate its application to county councils as modified by the provisions of this Act.

As to the effect of this section in incorporating the provisions of the Municipal Elections (Corrupt Practices) Act, 1884, see *Ex parte Walker*, 22 Q. B. D. 384 ; 58 L. J. Q. B. 190 ; 60 L. T. (N.S.) 581 ; 37 W. R. 293 ; 53 J. P. 260 ; 5 T. L. R. 217.

This whole section has been materially altered by the County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), *post*.

Provided as follows :—

(1.) * * * *

This sub-section, which provided for the election of county councillors (in years in which they are elected) and borough councillors being conducted together, was repealed by the County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68). Under that Act the elections of county councillors are held in March ; the ordinary day of election of councillors of a borough is November 1st : Municipal Corporations Act, 1882, s. 52, *post*.

(2.) Such person as the county council may appoint shall be the returning officer for the election of county

Sect. 75 (2).

councillors of the county council, in substitution for the mayor, and for the aldermen assigned for that purpose by the council.

The returning officer will be returning officer for the entire administrative county. The council will not appoint a returning officer for each division corresponding to the alderman appointed for each ward of a borough.

(3.) The returning officer, without prejudice to any other power, may by writing under his hand appoint a fit person to be his deputy for all or any of the purposes relating to the election of any such councillor, and may by himself or such deputy exercise any powers and do any things which a returning officer is authorized or required to exercise or do in relation to such election, and shall, for the purposes of the election, have all the powers of the sheriff.

Under this sub-section a deputy may be appointed for a division or group of divisions. Divisions may be grouped so as to have only one place for nominations, etc. See sub-s. (7), *post*. It is difficult to understand the reference to the sheriff. The election of county councillors resembles a municipal election, with which the sheriff as such has nothing to do. The sheriff was, however, the returning officer at the first election, and this may afford the explanation of this reference. See s. 103, *post*.

(4.) A reference in this Act, or in the enactments applied by this Act, to the returning officer or to the mayor or to the alderman shall, so far as relates to the election of any such councillor, be construed to refer to the returning officer, and any such deputy as above mentioned.

These references have been noticed under the several sections.

(5.) A reference in the said enactments to the town clerk, so far as respects the election of any such councillor, shall be construed to refer to the returning officer or his deputy, and as respects matters subsequent to the election, shall be construed to refer to the clerk of the county council.

These references have been noticed under the several sections. Nothing in this clause substituting the returning officer or his deputy for the town clerk is to extend to any election of county councillors for an electoral division co-extensive with or wholly comprised in a municipal borough; at such an election the town clerk will perform all the duties imposed upon the town clerk by the enactments referred to in the text. See the County Councils (Elections) Act, 1891, s. 3, *post*. After the election the duties of the town clerk are to be performed by the clerk of the county council. Thus in a division not comprised

within a borough the returning officer must provide nomination papers under the Municipal Corporations Act, 1882, Sched. 3, Part II., rule 6; but a copy of an election petition must be sent to the clerk of the council under s. 88 of that Act. Sect. 75 (5). NOTE.

As to the clerk of county council, see s. 83, 106, *post*.

(6.) * * * *

This clause related to the person to act as returning officer at an election of county councillors in an electoral division of a county co-extensive with or wholly comprised in a borough. It is now repealed by the County Councils (Elections) Act, 1891, which provides by s. 3 for the person to act as returning officer in such a case. See that Act, *post*.

(7.) Some place fixed by the returning officer shall, except where the election is in a borough, be substituted for the town clerk's office, and, as respects the hearing of objections to nomination papers, for the town hall, but such place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division.

In a borough nomination papers will be delivered to the town clerk, at his office, as at an election of town councillors.

In a division of a county not wholly within a borough, the nomination papers will be delivered to the returning officer (see sub-s. (5), *supra*), at some place fixed by him.

As to the application of s. 232 of the Municipal Corporations Act, 1882, which deals with the fixing of notices on the town hall, see the note to that section, *post*.

If any part of the division is within an urban district the place for receiving nomination papers and for hearing objections must be within that district. But if it is wholly rural, the place may be in an adjoining division. It is therefore possible to group several rural divisions adjoining an urban division so that the same place may be fixed for all, and so as to enable one person to perform the duties of returning officer for all. But see the note to sub-s. (3), *ante*.

(8.) The returning officer shall forthwith, after the election of county councillors for the county, return the names of the persons elected to the clerk of the county council.

(9.) * * * *

This clause is repealed by the County Councils (Elections) Act, 1891.

(10.) An outgoing alderman shall not, as alderman, vote in the election of a chairman.

This is an amendment of s. 60 (3) of the Municipal Corporations Act, 1882. The meaning of the words "as alderman" are obscure. Perhaps they are intended to meet a case where an outgoing alderman has in the meantime been

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NOTE.

(11.) The hours of the poll shall be those fixed by the Elections (Hours of Poll) Act, 1885.

48 & 49 Vict. c. 10.

The hours fixed by the Act are from 8 a.m. to 8 p.m. See the note to the Municipal Corporations Act, 1882, s. 58, *post*.

(12.) Section eleven of the Municipal Corporations Act, 1882, with respect to the qualification of a county councillor by reason of his being entered in the separate non-resident list, shall include, for the purposes of this Act, all persons entered in such separate list in any municipal borough by reason of occupation of property in the borough, and all persons entered in such separate list for any part of a county not in a municipal borough by reason of the occupation of property in that part.

See the section referred to, *post*.

By the provision in the text a person will be entitled to be elected a councillor if he is entered in the county separate non-resident list, or in the corresponding list for any borough under s. 49 of the Municipal Corporations Act, 1882.

(13.) * * * *

This clause was repealed by the County Councils (Elections) Act, 1891, which provides (s. 1) that the ordinary day of election of the chairman and county aldermen, etc., shall be the 16th day of March or such other day within ten days after the ordinary day of retirement of county councillors as the county council may from time to time fix.

(14.) Ten days shall be substituted for five days in section thirty-four of the Municipal Corporations Act, 1882, as the time within which a person elected to a corporate office is to accept that office, and twelve months shall be substituted for six months in section thirty-nine of the said Act, as the period of absence which disqualifies an alderman or councillor.

See the sections referred to, *post*. The period of ten days above mentioned has been extended to three months after notice of election by the County Councils (Elections) Act, 1891, s. 5, *post*. Absence will not disqualify the chairman or deputy chairman. See sub-s. (16) (*c*), *post*.

(15.) The quorum of the council shall be one-fourth of the whole number of the council, and one-fourth shall, for the purposes of this section, be substituted for one-third in paragraph ten of the second schedule to the Municipal Corporations Act, 1882.

See the paragraph referred to, *post*.

(16.) Nothing in the Municipal Corporations Act, 1882, as applied by this section— Sect. 75 (16).

(*a.*) Shall alter the application of any fine, penalty, or forfeiture recoverable in a summary manner ; or

This prevents the application to counties of the Municipal Corporations Act, 1882, s. 221, *post.*

(*b.*) Shall apply any of the provisions of the Municipal Corporations Act, 1882, with reference to boundaries or the alteration of wards or borough auditors, nor any of the following provisions, namely, sub-section five of section fifteen, section sixteen, section two hundred and fifty-one, or section two hundred and fifty-seven ; or

The provisions of the Municipal Corporations Act, 1882, as to boundaries, are contained in ss. 228, 229 ; as to alteration of wards, in s. 30 ; as to borough auditors, in ss. 25, 27, 37, 41, 42, 62. Section 15, sub-s. (5), provides that the mayor shall have precedence in all places in the borough ; s. 16 relates to the appointment of deputy mayor ; s. 251 contains a saving for local Acts ; and s. 257 contains a saving for the universities.

(*c.*) Shall render any person elected to a corporate office without his consent to his nomination being previously obtained liable to pay a fine on non-acceptance of office, or render a chairman or deputy-chairman disqualified as such by reason of absence ; or

This provision modifies the Municipal Corporations Act, 1882, ss. 34 and 39, *post.*

The deputy chairman is an officer appointed by the London County Council only. See s. 88, *post*, p. 166. He must not be confounded with the vice-chairman appointed under s. 2 (6), *ante*, p. 4, who may apparently become disqualified by absence.

(*d.*) * * * * *

This clause is repealed by the County Councils (Elections) Act, 1891, but it is substantially re-enacted by s. 1 (4) of that Act, *post.* The effect is that a casual vacancy which occurs within six months before a triennial election shall not be filled up.

(*e.*) Shall apply to a county council section seventeen of the said Act with respect to the town clerk, nor, unless the county council so resolve, section eighteen respecting the treasurer, but, if the county council so resolve, section eighteen shall supersede the existing enactments with respect to the county treasurer ; or

See the sections referred to, *post.*

As to the appointment of county treasurers, see s. 3 (x), *ante*, p. 10.

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(*f.*) Shall require the acts and proceedings of the standing joint committee of the county council and quarter sessions to be submitted to the county council for their approval; or

Under s. 22 (2) of the Municipal Corporations Act, 1882, the acts of committees must be submitted to the council for their approval. The text provides that such approval shall not be necessary in the case of the acts and proceedings of the standing joint committee, as to which, see s. 30, *ante*, p. 66. As to the approval of the acts and proceedings of other committees, see s. 82, *post*.

(*g.*) Shall prevent the use of schools and public rooms for the purpose of taking the poll at elections under this Act, but section six of the Ballot Act, 1872, shall apply in the case of elections under this Act, and the returning officer may, in addition to using such rooms free of charge for taking the poll, use the same free of charge for hearing objections to nomination papers and for counting votes.

35 & 36 Vict. c. 33.

Section 6 of the Ballot Act, 1872, provides that a returning officer may use, free of charge, for the purpose of taking the poll at an election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same, on account of its being used for the purpose of taking the poll as aforesaid. This section does not apply to municipal elections (see the Municipal Corporations Act, 1882, Sched. 3, Part III., r. 1, *post*). It will, however, apply to elections of county councillors, for the purposes of taking the poll, hearing objections, and counting votes.

(17.) All costs properly incurred in relation to the holding of elections of councillors of county councils, so far as not otherwise provided for by law, shall be paid out of the county fund as general expenses.

As to what are general expenses, see s. 68, sub-s. (2), *ante*, p. 130.

(18.) The said costs shall not exceed those allowed by Part I. of the First Schedule to the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act, 1885, or by such scale as the county council may from time to time frame.

38 & 39 Vict. c. 84.
48 & 49 Vict. c. 62.

The enactments referred to in the text are set out in Part II. of this work, *post*.

(19.) Sections four, five, six, and seven of the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, shall apply as if they were herein re-enacted with the necessary modifications, and in particular with the substitution of the county council for the person from whom payment is claimed, and of one month for the period of fourteen days within which application may be made for taxation. Sect. 75 (19). 49 & 50 Vict. c. 57.

The incorporated sections are set out in Part II. of this work, *post*.
The expenses of the returning officers are payable by the county council under sub-s. (17), *supra*, not by the candidate.

(20.) A county council shall, on the request of the returning officer, prior to a poll being taken at any election of a councillor of such council, advance to him such sum not exceeding ten pounds for every thousand electors at the election as he may require.

This is a useful and necessary provision, for the expenses of holding a number of elections simultaneously throughout a county must necessarily be heavy.

(21.) The meeting of a county council, or of any committee thereof, may be held at such place, either within or without their county, as the council from time to time direct.

76.—(1.) The provisions of section four of the County Electors Act, 1888, with respect to the framing of the lists and register of voters in parts, shall extend to parishes situate within a parliamentary borough. Amendment of 51 & 52 Vict. c. 10.

The County Electors Act, 1888, is set out *in extenso* in Part II. of this work *post*.
The County Electors Act, 1888, s. 4, sub-s. (2), provides that in the construction of the Registration of Electors Acts for the purposes of their application to a parish not situate in a municipal borough, there shall be made the variations following, and such other variations as may be necessary for carrying into effect the application, that is to say :-
"(*e*) Where such parish is not within a parliamentary borough, section 21 of the Parliamentary and Municipal Registration Act, 1878, shall not apply, and the lists and register of voters shall be made out alphabetically, but shall be framed in parts for polling districts and electoral divisions and for urban districts, and for wards of urban and rural districts in such a manner that the parts may be conveniently compiled or put together to serve as lists for

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NOTE.

This provision will now apply to parishes within as well as without a parliamentary borough. But it is to be observed that the sub-section only relates to parishes not situate within a *municipal* borough.

As to the framing of the lists of parochial electors in parts for wards, see the Local Government Act, 1894, s. 44, *post*.

(2.) In the provisions of section four of the said Act with respect to making out the lists of voters according to the order in which the qualifying premises appear in the rate book, the county authority shall mean the county council.

The following is the provision in s. 4 above referred to :—

"(3.) Notwithstanding anything in this Act contained, where a municipal borough or an urban district is co-extensive with any electoral division or divisions of a parliamentary county, the lists of voters may be directed by the county authority to be made out according to the order in which the qualifying premises appear in the rate book, and section twenty-one of the Parliamentary and Municipal Registration Act, 1878, shall apply to such borough or urban district, and where lists of voters are so made out nothing in this Act shall require such part of the county register as consists of these lists to be arranged alphabetically."

(3.) The names of the parliamentary electors and county electors in the lists in each polling district may be numbered consecutively, and such portion of those lists as consists of the names of parliamentary electors may be taken to form the register for the purpose of parliamentary elections, and such portion of those lists as contains the names of county electors may be taken to form the register of county electors.

In the lists of occupation voters divisions 1 and 3 will contain the names of the county electors, and divisions 1 and 2 will contain the names of the parliamentary voters.

See also s. 44 (6) of the Local Government Act, 1894, *post*.

(4.) For the purpose of the provisions of the Acts relating to the appointment of revising barristers, and of section nine of the County Electors Act, 1888, the county of Surrey and such portion of the county of London as is situate south of the Thames shall be deemed to be separate counties forming part of the south-eastern circuit ; and such portion of the administrative county of London as is situate north of the Thames shall be deemed to form part of the county of Middlesex ; and the county of Middlesex, inclusive of that portion, shall be deemed to be a separate county on a circuit ; but any sum payable by the London County Council in respect of either of the said portions of the county shall be paid as for a general county purpose.

Section 9 of the County Electors Act is as follows :— Sect. 76 (4).

"Every barrister appointed to revise any list of voters under the Parliamentary Voters Registration Act, 1843, shall be paid the sum of two hundred and fifty guineas by way of remuneration to him, and in satisfaction of his travelling and other expenses, and every such barrister, after the termination of his last sitting, shall forward his appointment to the Commissioners of Her Majesty' Treasury, who shall make an order for the payment of the above sum to every such barrister. NOTE.

"The maximum amount to be paid to an additional barrister in pursuance of the Revising Barristers Act, 1886, shall not exceed the amount authorized by this section to be paid to a revising barrister.

"The sums so paid to a revising barrister or an assistant barrister shall be payable partly out of moneys provided by Parliament and partly by the county authorities as hereinafter mentioned.

"(1.) There shall be annually paid by the county authority of every county out of the county fund into Her Majesty's Exchequer such sum as the Treasury certify to be one-half of the cost incurred for the payment of revising barristers at the then last revision of the lists of parliamentary electors, burgesses, and county electors in that county.

"(2.) The Treasury shall yearly ascertain the total cost of the revising barristers appointed for all the counties and boroughs on any circuit, and shall divide one-half of such cost among the counties comprised in such circuit in proportion to the number of burgesses and county electors in each county, and certify the amount which under such apportionment is due under this section from each county. The Treasury may vary such certificate if they think fit, but unless it is so varied the certificate shall be final.

"(3.) So much of any Act as requires a payment out of the borough fund of any borough to a revising barrister, in respect of the revision of the burgess lists, shall be repealed, without prejudice to any payment or liability previously made or incurred."

The text amends the provision as to the revising barristers for Middlesex and Surrey.

As to general county purposes, see s. 68, *ante*, p. 130.

In the county of Middlesex, the city of London, the city of Westminster, and the several parliamentary boroughs in London north of the Thames, the revising barristers are appointed by the Lord Chief Justice. In other counties, cities, and boroughs they are appointed by the senior judge in the commission of assize for the county actually travelling the summer circuit. The Acts relating to the appointment of revising barristers are 6 & 7 Vict. c. 18, ss. 28, 29 ; 31 & 32 Vict. c. 58, s. 25 ; 36 & 37 Vict. c. 70, s. 3 ; 37 & 38 Vict. c. 53 ; 49 & 50 Vict. c. 42 ; and the County Electors Act, 1888 (51 Vict. c. 10), ss. 9, 10.

(5.) The provisions of section eleven of the County Electors Act, 1888, with respect to the payment of the sums therein mentioned shall apply to the payment of the said sums in the year one thousand eight hundred and eighty-eight in like manner as if a county authority had not been established under this Act.

Section 11 of the County Electors Act is as follows :—

"(1.) In the event of a county authority being established under any Act of the present session, the provisions of this Act with respect to county authority,

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county, and county fund shall refer to the said county authority and to the county and county fund of such authority, and in case of any borough which, for the purposes of the said Act, is a county of itself, to the council of the borough and to the borough and borough fund.

"(2.) In the event of a county authority not being established under any Act during the present session, the sums directed by this Act to be paid out of and into the county fund shall be paid by or under the direction of the local authority of every county quarter sessional area within the meaning of the Registration Act, 1885, in like manner as expenses or receipts of the clerk of the peace for such area under the Registration of Electors Acts, and by and under the direction of the council of every municipal borough which is also a parliamentary borough out of and into the borough fund, and the amount to be paid for revising barristers shall be apportioned between such quarter sessional areas and boroughs upon the principles above mentioned in this Act."

As to the county fund, see s. 68, *ante*, p. 130.

51 & 52 Vict. c. 10.

(6.) It is hereby declared that nothing in section twelve of the County Electors Act, 1888, applies to any person occupying property within a borough.

Section 12 of the County Electors Act is as follows :—

"A list of persons occupying property in a county, and residing within fifteen miles but more than seven miles from the county, shall be made out in accordance with section forty-nine of the Municipal Corporations Act, 1882, and that section shall apply as if it were herein re-enacted, with the substitution of 'county for 'borough,' and of 'county elector' for 'burgess,' and of 'clerk of the peace' for 'town clerk.'"

The effect of this amendment is stated in the notes to s. 49 of the Municipal Corporations Act, 1882, *post*.

(7.) It shall be lawful for Her Majesty the Queen, by Order in Council, from time to time to alter the instructions, precepts, notices, and forms under the Registration of Electors Acts, in such manner as appears to Her Majesty necessary for carrying into effect this Act and the County Electors Act, 1888, and any other Act for the time being in force amending or affecting the Acts mentioned in this sub-section, and the instructions, precepts, notices, and forms specified in any such Order in Council shall be observed and be valid in law, and clerks of the peace, and town clerks, and other officers shall act accordingly.

This provision is supplemental to that contained in s. 13 of the County Electors Act, which is as follows :—

"All precepts, notices, and forms required for the purposes of the Registration of Electors Act, shall be altered in such manner as may be declared by Her Majesty in Council to be necessary for carrying into effect this Act, and clerks of the peace and town clerks shall alter their precepts and forms accordingly, and if clerks of the peace or town clerks have sent out precepts to the overseers before the passing of this Act, they shall send to them such supplemental precepts as are necessary or desirable for instructing them to carry into effect this Act."

The last Registration Order issued under this provision is published in the *London Gazette* of March 19th, 1895. It is set out in Mackenzie and Lushington's Registration Manual. Sect. 76 (7). NOTE.

(8.) The provisions of section six of the said County Electors Act, 1888, requiring the statement of the barrister for the purpose of an appeal to be made not less than four days before the first day of the Michaelmas sittings, shall not apply in the year one thousand eight hundred and eighty-eight.

The provisions of s. 6 of the County Electors Act, above referred to, are as follows :—

"(2.) In sections sixty-two and sixty-three of the Parliamentary Voters Registration Act, 1843 (relating to appeals from revising barristers in England), 'the Michaelmas sittings of the High Court of Justice' shall be substituted for 'the Michaelmas term,' and forthwith after the fourth day of the Michaelmas sittings a court or courts shall sit for the purpose of hearing such appeals, and those appeals shall be heard and determined continuously and without delay, and any statement by the barrister for the purpose of any such appeal made in pursuance of section forty-two of the said Act may be made at any time within ten days after the conclusion of the revision, so that it be made not less than four days before the first day of the said Michaelmas sittings, and the statement need not be read in open court, but shall be submitted to the appellant, who, if he approves the same, shall sign the same as directed by the said section, and return the same to the barrister."

77. A person who is entitled to be registered as a county elector in respect of any qualification in the administrative county of London, in all respects except that of residence, and is resident beyond seven miles but within fifteen miles of the county, shall be entitled to be registered as a county elector. Residential qualification of county electors in administrative county of London.

This provision is in effect that the persons whose names would in the ordinary way be placed in the separate non-resident list shall in London be qualified not only to be elected county councillors, but to be registered as county electors. There will not, therefore, be any need for a separate non-resident list in the county of London. See the notes to ss. 9 and 49 of the Municipal Corporations Act, 1882, *post*.

As to the "administrative county of London, see s. 40, *ante*, p 88.

78.—(1.) All enactments in any Act, whether general or local and personal, relating to any business, powers, duties, or liabilities transferred by or in pursuance of this Act from any authority to a county council, either alone or jointly with the quarter sessions, or to any joint committee, shall, subject to the provisions of this Act, and so far as circumstances admit, be construed as if— Construction of Acts referring to business transferred.

(*a*) any reference therein to the said authority or to any committee or member thereof or to any meeting thereof (so far as it relates to the business, powers, duties, or liabilities transferred) referred to the county council or to a

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committee or member thereof or to a meeting thereof, as the case requires, and as if—

(*b*) a reference to any clerk or officer of such authority referred to the clerk or officer of a county council or committee thereof, as the case requires,

and all the said enactments shall be construed with such modifications as may be necessary for carrying this Act into effect.

This is a general provision making all Acts relating to business transferred applicable to the county council as the authority for the execution of these Acts and to the committees, members, and officers of the county council.

As to the standing joint committee, see s. 30, *ante*, p. 66.

As to other joint committees under this Act, see ss. 5 (3), 10, 14, 33 (2), 34 (5), 46, 47, 81, 82, and 111.

(2.) Provided that the transfer of powers and duties enacted by this Act shall not authorize any county council or any committee or member thereof—

(*a*) to exercise any of the powers of a court of record; or

(*b*) to administer an oath; or

(*c*) to exercise any jurisdiction under the Summary Jurisdiction Acts, or perform any judicial business, or otherwise act as justices or a justice of the peace;

but this enactment shall be without prejudice to the position of the chairman of the county council as justice of the peace during his term of office.

This proviso preserves to justices all their judicial powers and authority. See also ss. 8, 9, *ante*, p. 18.

As to the authority of the chairman as a justice, see s. 2, sub-s. (5), *ante*, p. 4.

Although this section prohibits the administration of an oath by the county council, it was held that in considering applications for music and dancing licences the London County Council act judicially. See the cases cited in the note to s. 3 (v.), *ante*, p. 7.

(3.) Where under any such enactment as in this section mentioned, any powers, duties, or liabilities are to be exercised or discharged after any presentment or in any particular manner, or at any particular meeting, or subject to any other conditions, the county council may, by the standing orders for the regulation of their proceedings, provide for the exercise and discharge of those powers, duties, and liabilities without any such prior presentment or in a different manner, or at any meeting of the council fixed by the standing orders, or without such other conditions; and until such standing orders take effect shall exercise and discharge them in the like manner, and at the like time, and subject to the like conditions, so nearly as circumstances admit; and a presentment by

a grand jury in relation to any such powers, duties, or liabilities shall cease to be made otherwise than by way of indictment. Sect. 78 (3).

It will be the duty of the county council to make standing orders for the regulation of their business and for the purposes of the foregoing provisions. Their power to make standing orders is derived from the Municipal Corporations Act, 1882, Sched. 2, 13, *post*, which is incorporated by s. 75, *ante*.

At common law the grand jury or any twelve of them may make presentments for offences, etc., within their own knowledge. Such presentments are delivered into court to the clerk of the peace, who put them into the form of indictments on which process may issue as in the case of indictments found; Archbold's Quarter Sessions, p. 202. A common presentment was that a county bridge is out of repair. By reason of the provision in the text, presentments by a grand jury cannot now be made as to any powers, etc., transferred to the county council, except by way of indictment.

(4.) For the purposes of this section the expression "authority" means a Secretary of State, the Board of Trade, the Local Government Board, and any Government Department, also any commissioners, conservators, or public body, corporate or incorporate, specified in a provisional order transferring any powers, duties, or liabilities to the county council, also any quarter sessions and any justices, also the Metropolitan Board of Works, or other local authority mentioned in this Act; and the expression "member of an authority" includes, where the authority are quarter sessions or justices, any justice, and the expression "meeting of an authority" includes a court of quarter sessions and the assembly of justices in special or petty sessions; and the expression "clerk of an authority" includes in relation to any quarter sessions or justices, the clerk of the peace or the clerk to a justice, as the case requires.

This section shall apply as if a joint committee were a committee of the county council.

As to the provisional orders here referred to, see s. 10, *ante*, p. 19.
As to the Metropolitan Board of Works, see s. 40, sub-s. (8), *ante*, p. 90.
As to joint committee, see the note to sub-s. (1), *supra*.

Proceedings of Councils and Committees.

79.—(1.) The council of each county shall be a body corporate by the name of the county council with the addition of the name of the administrative county, and shall have perpetual succession and a common seal and power to acquire and hold land for the purposes of their constitution without licence in mortmain. Incorporation of county council.

(2.) All duties and liabilities of the inhabitants of a county shall become and be duties and liabilities of the council of such county.

One result of this sub-section appears to be that the county council will be liable to be indicted for non-repair of a county bridge. See also as to the

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effect of this sub-section, *Salford (Mayor, etc., of)* v. *Lancashire County Council*, cited *ante*, p. 123, and the note to this section in Pratt's Law of Highways, 14th ed., p. 488.

(3.) Where any enactment (whether relating to lunatic asylums or bridges, or other county purposes, or to quarter sessions) requires or authorizes land to be conveyed or granted to, or any contract or agreement to be made in the name of the clerk of the peace or any justice or justices, or other person, on behalf of the county or quarter sessions, or justices of the county, such land shall be conveyed or granted to, and such contract and agreement shall be made with, the council of the administrative county concerned.

The conveyance or contract, as the case may be, is to be made directly to or with the council, which is a corporate body; see sub-s. (1), *supra*.

Payments out of fund and finance committee of county council.

80.—(1.) All payments to and out of the county fund shall be made to and by the county treasurer, and all payments out of the fund shall, unless made in pursuance of the specific requirement of an Act of Parliament or of an order of a competent court, be made in pursuance of an order of the council signed by three members of the finance committee present at the meeting of the council and countersigned by the clerk of the council, and the same order may include several payments. Moreover, all cheques for payment of moneys issued in pursuance of such order shall be countersigned by the clerk of the council or by a deputy approved by the council.

As to the county treasurer, see s. 3 (iii.), *ante*, p. 6, and s. 118, sub-s. (13), *post*.

The finance committee is appointed under sub-s. (3), *infra*.

As an illustration of the reference to payments in pursuance of an order of a competent court, reference may be made to 9 Geo. 4. c. 61, s. 29, under which on a licensing appeal the quarter sessions may order the treasurer to pay the costs of the respondent justices.

An order for the payment of money is to be made pursuant to an order of the council directed to the treasurer. It must be signed by three members of the finance committee present at the meeting at which the order is made, and it must be countersigned by the clerk.

The treasurer's cheques issued in pursuance of this order must also be countersigned by the clerk or a deputy approved by the council.

(2.) Any such order may be removed into the High Court of Justice by writ of *certiorari*, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court.

This provision is similar to that contained in the Municipal Corporations Act, 1882, s. 141, as to which see *R.* v. *Lichfield*, 4 Q. B. 893; *R.* v. *Greene*, *ib.* 646; *R.* v. *Dunn*, 5 Q. B. 959; *R.* v. *Prest*, 16 Q. B. 32; 20 L. J. Q. B. 17; 14 J. P. 750; *Att.-Gen.* v. *Wigan*, 1 Kay, 268; *R.* v. *Sheffield*,

L. R. 6 Q. B. 652 ; 40 L. J. Q. B. 247 ; 24 L. T. (N.S.) 659 ; 19 W. R. 1159 ; *R.* v. *Norwich*, 30 W. R. 752 ; *Att.-Gen.* v. *Blackburn*, 57 L. T (N.S.) 385 ; *R.* v. *Ramsgate* (*Mayor, etc., of*), 23 Q. B. D. 66 ; 58 L. J. Q. B. 352 ; 61 L. T. (N.S.) 333 ; 37 W. R. 781 ; 53 J. P. 740. And as to the liability to pay the costs of the proceedings, see *R.* v. *Vaile or Whiteley*, 23 Q. B. D. 483 ; 58 L. J. M. C. 164 ; 61 L. T. (N.S.) 253 ; 54 J. P. 134. Sect. 80 (2). NOTE.

A writ of *certiorari* under this sub-section need not be applied for within six months, for the 13 Geo. 2, c. 18, s. 2, applies only to orders, etc., of justices. *R.* v. *Sheffield*, *supra*.

(3.) Every county council shall from time to time appoint a finance committee for regulating and controlling the finance of their county ; and an order for the payment of a sum out of the county fund, whether on account of capital or income, shall not be made by a county council, except in pursuance of a resolution of the council passed on the recommendation of the finance committee, and (subject to the provisions of this Act respecting the standing joint committee) any costs, debt, or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee.

As to the form of the order, see sub-s. (1), *supra*.

As to the joint committee, see s. 30, *ante*, p. 66.

The provision in the text that costs not exceeding 50*l.* shall only be incurred on an estimate submitted by the finance committee may be inconvenient in practice. An emergency may require the immediate expenditure of money ; for example, a county bridge may be washed away or injured by a flood.

(4.) The notice of the meeting at which any resolution for the payment of a sum out of the county fund (otherwise than for ordinary periodical payments), or any resolution for incurring any costs, debt, or liability exceeding fifty pounds will be proposed, shall state the amount of the said sum, costs, debt, or liability, and the purpose for which they are to be paid or incurred.

The notice of the meeting here referred to is that which must be given pursuant to the Municipal Corporations Act, 1882, Sched. 2, rr. 5 and 6.

(5.) This section shall not apply to county boroughs.

As to county boroughs, see ss. 31—34, *ante*, and Sched. 3, *post*.

81.—(1.) Any county council or councils, and any court or courts of quarter sessions, may from time to time join in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested. Appointment of joint committees.

This joint committee is distinct from the standing joint committee appointed under s. 30, *ante*, p. 66. It is difficult to suggest any matter in which county councils and quarter sessions can be jointly interested which is not within the jurisdiction of the standing joint committee. The section, however, relates not merely to joint committees of councils and sessions, but of two

Sect. 81 (1). or more county councils for purposes in which such councils are jointly interested.

NOTE. As to joint committees particularly referred to in the Act, see note to s. 78, *ante*, p. 152.

(2.) Any council or court taking part in the appointment of any joint committee under this section, may from time to time delegate to the committee any power which such council or court might exercise for the purpose for which the committee is appointed.

(3.) Provided that nothing in this section shall authorize a council to delegate to a committee any power of making a rate or borrowing any money.

Compare the provisions of s. 28 (3), *ante*, p. 65.

(4.) Subject to the terms of delegation, any such joint committee shall, in respect of any matter delegated to it, have the same power in all respects as the councils and courts appointing it, or any of them, as the case may be.

(5.) The members of a joint committee appointed under this Act shall be appointed at such times and in such manner as may be from time to time fixed by the council or court who appointed them, and shall hold office for such time as may be fixed by the council or court who appointed them, so that where any members of the committee were appointed by the county council, such committee do not continue for more than three months after any triennial election of councillors of such county council.

It is presumed that notwithstanding the concluding words of this sub-section, any member of the committee who has not been re-elected at a triennial election will cease to act as a member of the committee. The committee as a body will, however, continue to act for three months after the election, or until they are re-appointed.

(6.) The costs of a joint committee shall be defrayed by the council by whom any of its members were appointed, or if appointed by more than one council in the proportion agreed to by them ; and the accounts of such joint committee and their officers shall, for the purposes of the provisions of this Act, be deemed to be accounts of the county council and their officers.

As to the accounts of the county council and their officers, see s. 71, *ante*, p. 136.

(7.) This section shall apply to the councils of county boroughs in like manner as to councils of administrative counties, and a standing joint committee may be appointed for two or more administrative counties, inclusive of county boroughs, and the

members of such joint committee shall be appointed by the several quarter sessions and councils in such proportion and manner as they respectively may arrange, and in default of arrangement as may be directed by a Secretary of State. Sect. 81 (7).

The effect of this provision is that a single standing joint committee may be appointed for two or more counties, or counties and county boroughs.

(8.) This section shall apply to the standing joint committees.

82.—(1.) A county council appointing under this Act any committee may from time to time make, vary, and revoke regulations respecting the quorum and proceedings of such committee, and as to the area (if any) within which it is to exercise its authority; and subject to such regulations the proceedings and quorum and the place of meeting, whether within or without the county, shall be such as the committee may from time to time direct, and the chairman at any meeting of the committee shall have a second or casting vote. Proceedings of committees.

The duly appointed executive committee of a county council made an order delegating to local sub-committees its powers under the Contagious Diseases (Animals) Acts and under certain Orders in Council, including the Rabies Order, 1887. Subsequently to such delegation the executive committee, without expressly revoking the delegation, issued certain regulations under the Rabies Order, 1887, as to the muzzling of dogs and keeping them under control. No regulations under that order had been issued by the local sub-committees. It was held that the delegation was not equivalent to a resignation by the executive committee of its own powers, that the delegated authority was subject to resumption at any time, and that the regulations were therefore valid. *Huth* v. *Clarke*, 25 Q. B. D. 391; 59 L. J. M. C. 120; 63 L. T. (N.S.) 348; 38 W. R. 655; 6 T. L. R. 373.

It would appear that separate regulations must be made for each committee unless general regulations are made, which may, with or without modification, be applied to each committee when appointed.

Observe that the text provides for the casting vote of the chairman.

As to the general appointment of committees, see s. 28, *ante*, p. 63.

(2.) Every committee shall report its proceedings to the council by whom it was appointed, but to the extent to which the council so direct, the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act, 1882, to be submitted to the council for their approval.

The council may dispense with the necessity of submitting the acts of the committee for their approval. This provision modifies the Municipal Corporations Act, 1882, s. 22 (*post*). Compare s. 75, sub-s. (16) (*f*), *ante*, p. 146.

(3.) In the case of a joint committee the councils and courts appointing the joint committee shall jointly have the powers given

Sect. 82 (3). by this section, and the provisions of this section shall apply accordingly.

As to joint committees, see s. 81, *ante*.

Officers.

Clerk of the peace and of county council.

83. Subject to the provisions of this Act for the protection of clerks of the peace holding office at the passing of this Act, the following provisions shall have effect :—

The provisions of this Act here referred to are contained in s. 118, *post*.

(1.) The clerk of the peace of a county, besides acting as clerk of the peace of that county, shall also (subject to the provisions of this Act as respects particular counties) be the clerk of the county council, and in that capacity is referred to in this Act as the clerk of the county council.

The provisions of this Act as to particular counties are contained in the subsequent sub-sections of this section, and in s. 118, *post*.

(2.) He shall be from time to time appointed by the standing joint committee of the county council and the quarter sessions, and may be removed by that joint committee.

As to the standing joint committee, see s. 30, *ante*, p. 66.
As to the removal of the clerk of the peace under the law which is still in force so far as regards a clerk of the peace holding office on the appointed day, see 1 Will. & M. c. 21, ss. 5, 6 ; 27 & 28 Vict. c. 65.

(3.) He shall, subject to the directions of the custos rotulorum or the quarter sessions or the county council, as the case may require, have charge of and be responsible for the records and documents of the county.

The records of the county are to remain in the same custody as heretofore. See s. 64, sub-s. (1), *ante*, p. 122. Anything necessary for the convenient keeping of records and documents is to be provided by the standing joint committee, s. 64, sub-s. (3), *ante*, p. 124.

(4.) The joint committee may appoint a deputy clerk to hold office during their pleasure, and to act in lieu of such clerk in case of his death, illness, or absence, or in such other cases as may be determined by the joint committee, and wherever the deputy so acts, all things authorized or required to be done by, to, or before the clerk of the peace, or clerk of the county council, may be done by, to, or before any such deputy without prejudice to the appointment of a deputy clerk for the purpose of a second court on the division of the court of quarter sessions for judicial business.

But see s. 118, *post*, as to the power of existing clerks of the peace to appoint and act by deputy. The power to appoint a deputy clerk for a second court is given by 21 & 22 Vict. c. 73, s. 9. Sect. 83 (4). NOTE.

(5.) The council shall pay to the clerk of the peace in respect of his services as clerk of the peace and as clerk of the county council such salary as may be from time to time fixed under the enactments relating thereto, and all fees and costs payable to the clerk of the peace which are not excluded when the salary of the clerk of the peace is fixed shall be paid to the county fund, and for the purpose of the enactments relating to such salary and fees, the standing joint committee of the county council and the quarter sessions shall be substituted for the quarter sessions and the local authority respectively.

The enactments relating to the salary and fees of the clerk of the peace are the 57 Geo. 3, c. 91 ; 11 & 12 Vict. c. 43, s. 30 ; 14 & 15 Vict. c. 55, ss. 9, 12 ; 18 & 19 Vict. c. 126, s. 18 (set out, *ante*, p. 56) ; 32 & 33 Vict. c. 89, s. 11 ; 45 & 46 Vict. c. 50, s. 164.

For the provisions of these Acts the reader is referred to Archbold's Quarter Sessions.

As to the county fund, see s. 68, *post*.

(6.) The clerk of the peace, when acting in relation to any business of the county council, and when acting under the Acts relating to the registration of parliamentary voters, or to the deposit of plans or documents, or to jury lists, or to any registration matters, shall act under the direction of the county council, and all enactments relating to such business, registration, or deposit, shall be construed as if clerk of the county council were therein substituted for clerk of the peace.

The duties of the clerk of the peace under the Acts relating to the registration of voters are very numerous and cannot here be stated in detail. The reader is referred to the recent edition of Messrs. Mackenzie and Lushington's work on these Acts.

As to the deposit of plans and documents, see the Cemeteries Clauses Act (10 & 11 Vict. c. 65), s. 60 ; the Commissioners Clauses Act (10 & 11 Vict. c. 16), ss. 109—111 ; the Gas Works Clauses Act (10 & 11 Vict. c. 15), ss. 45, 46 ; the Harbours, &c., Clauses Act (10 & 11 Vict. c. 27), ss. 97, 98 ; the Lands Clauses Act (8 Vict. c. 18), ss. 151, 152 ; the Markets and Fairs Clauses Act (10 & 11 Vict. c. 14), ss. 58, 59 ; the Railways Clauses Act (8 Vict. c. 20), ss. 8—10, 59, 130, etc. By the 7 Will. 4 & 1 Vict. c. 83, clerks of the peace are required to take the custody of all such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament, and to permit all persons interested to inspect them and make copies and extracts on payment by each person of the sum of 1*s.* for each such inspection, and the further sum of 1*s.* for every hour during which such inspection shall continue

Sect. 83 (6). after the first hour, and after the rate of 6*d.* for every 100 words copied therefrom.

NOTE.

As to the duties of the clerk of the peace with reference to the jury lists, see 6 Geo. 4, c. 50, s. 6, and 25 & 26 Vict. c. 107, s. 4.

All these duties are now to be performed under the direction of the county council by the clerk of the county council as such.

(7.) The office of clerk of the peace of each of the administrative counties of Sussex and Suffolk shall be a separate office ; but nothing in this Act shall prevent the same person from being appointed to both such offices, and the justices in general sessions assembled for the entire county of Sussex or Suffolk may from time to time appoint the person who is clerk of the peace for either administrative county to be clerk of the peace of such general sessions, and may remove such clerk, and the remuneration to be paid to such clerk shall be determined jointly by the standing joint committees for the administrative counties.

As to the divisions of Sussex and Suffolk, see s. 46, sub-s. (1) *ante*, p. 99.

(8.) The existing records of the county of Sussex and of the county of Suffolk shall, subject to the order of quarter sessions, continue to be kept by the clerk of the peace of East Sussex and by the clerk of the peace for East Suffolk respectively.

(9.) This section shall apply to the clerks of the peace and deputy clerks of the peace of the county of Lancaster, in like manner as it applies to clerks of the peace of any other county, but the appointment of any such deputy clerk of the peace may be discontinued if the standing joint committee think fit.

(10.) The joint committee of the councils of the three ridings or divisions of Yorkshire and Lincolnshire may from time to time appoint a clerk of such joint committee, and may from time to time remove such clerk.

As to this joint committee, see s. 46, sub-s. (2), *ante*, p. 99.

(11.) The clerk of the peace for the county of London shall be a separate officer from the clerk of the county council for the administrative county of London, and

(*a.*) The clerk of the peace shall, subject to the directions of the quarter sessions, have charge of and be responsible for the records and documents of those sessions and of the justices out of session, and the clerk of the county council shall, subject to the directions of the council, have charge of and be responsible for all other documents of the county ; and

(*b.*) The council may from time to time appoint a deputy clerk of the council, and the foregoing provisions of this section with respect to the deputy clerk shall apply; and Sect. 83 (11).

(*c.*) The council shall pay to the clerk of the council such salary as may be from time to time fixed by them.

(12.) The county council shall cause their clerk or other officer from time to time to send to a Secretary of State or the Local Government Board such returns and information as may from time to time be required by either House of Parliament.

(13.) Provided always, that no paid clerk or other paid official in the permanent employment of a county council who is required to devote his whole time to such employment shall be eligible to serve in Parliament.

Appointment of the justices' clerks and clerks of committees.

84.—(1.) The salaried clerk of every petty sessional division shall be from time to time appointed and removed as heretofore.

Clerks to justices are appointed in counties by the justices of the petty sessional division under 40 & 41 Vict. c. 43, s. 5, and in boroughs by the borough justices under 45 & 46 Vict. c. 50, s. 159.

(2.) The county council shall pay to the salaried clerks of petty sessional divisions such salaries as may be fixed under the enactments relating to those clerks, and all fees and costs payable to such clerks which are not excluded in the fixing of their salaries shall be paid into the county fund, and in the enactments relating to such salaries and fees the standing joint committee shall be substituted for the quarter sessions justices and the local authority respectively.

The enactments relating to the salaries and fees of justices' clerks are 11 & 12 Vict. c. 43, s. 31; 14 & 15 Vict. c. 55, ss. 9—12; 40 & 41 Vict. c. 43. See also the Local Stamp Act, 1869 (32 & 33 Vict. c. 49), referred to in s. 3 (xiii.) *ante*, p. 12, and s. 30, *ante*, p. 66.

The duties of the quarter sessions justices and local authority under these Acts will henceforth be fulfilled by the standing joint committee appointed under s. 30.

As justices' clerks are not appointed by the county councils nor removable by them, it is submitted that they are not disqualified by s. 12 of the Municipal Corporations Act, 1882, to be county councillors.

The enactment in the text imposes on a county council the duty of paying the salary of the justices' clerk in a borough within the county; and all fees and costs payable to such clerk, which are not excluded in the fixing of his salary, should be paid into the county fund. *Cornwall County Council* v. *Truro Town Council*, 63 L. J. M. C. 60; 70 L. T. (N.S.) 354; 58 J. P. 299; *Herefordshire County Council and Leominster Town Council, in re*, [1895] 1

Sect. 84 (2). Note. Q. B. 43 ; 64 L. J. M. C. 26 ; 71 L. T. (N.S.) 576 ; 59 J. P. 348 ; *Thetford (Mayor of, etc.* v. *Norfolk County Council*, 67 L. J. Q. B. 55 ; 14 T. L. R. 35.

Regulations for Bicycles, etc.

Regulations for bicycles, etc.

85.—(1.) The provisions of section twenty-six, sub-section five, of the Highways and Locomotives (Amendment) Act, 1878, and section twenty-three, sub-section one, of the Municipal Corporations Act, 1882, in so far as it gives power to the council to make bye-laws regulating the use of carriages herein referred to, and all other provisions of any public or private Acts, in so far as they give power to any local authority to make bye-laws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby repealed, and bicycles, tricycles, velocipedes, and other similar machines are hereby declared to be carriages within the meaning of the Highway Acts; and the following additional regulations shall be observed by any person or persons riding or being upon such carriage :—

(*a.*) During the period between one hour after sunset and one hour before sunrise, every person riding or being upon such carriage shall carry attached to the carriage a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted, as to afford adequate means of signalling the approach or position of the carriage ;

(*b.*) Upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger, being on or proceeding along the carriage way, every such person shall within a reasonable distance from and before passing such cart or carriage, horse, mule, or other beast of burden, or such foot passenger, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage.

Section 26, sub-s. (5), of the Highway Act, 1878, enabled a county authority to make bye-laws for regulating the use of bicycles. These bye-laws differed considerably in the different counties, and from bye-laws regulating the use of bicycles and tricycles in boroughs made under s. 23 of the Municipal Corporations Act, 1882, *post*. The power to make bye-laws for these purposes is now repealed, as also are the provisions of any public or private Acts giving power to make such bye-laws. The additional regulations under this sub-section are of universal application, and superseded all previously existing local regulations.

The declaration that bicycles, etc., are carriages within the meaning of the Highway Acts was, perhaps, unnecessary, for it was held in *Taylor* v. *Goodwin*, 4 Q. B. D. 228 ; 43 J. P. 653, that a bicycle is a carriage within the meaning of s. 78 of the Highway Act, 1835, and that a person might be convicted under

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it of furious driving, and see *McKee* v. *McGrath*, 30 L. R. Ir. 41. But possibly there was some doubt on the point, having regard to *Williams* v. *Ellis*, 5 Q. B. D. 175; 42 L. T. (N.S.) 249; 44 J. P. 394, where it was held that a bicycle was not a carriage liable to toll under a Turnpike Act. At all events, the text makes an express provision, the effect of which is to apply to bicycles, etc., the provisions of the Highway Acts as to driving on footpaths, keeping to the near side of the road, furious driving, etc. See, in particular, ss. 72 and 78 of the Highway Act, 1835.

At the Sussex Assizes before HAWKINS, J., a defendant was convicted and sentenced to four months hard labour under 24 & 25 Vict. c. 100, s. 35, for riding a bicycle in a furious manner, thereby causing bodily harm. *R.* v. *Parker*, 59 J. P. 793. A bicycle was held to be a vehicle within a local Act, which prohibited the use of vehicles for advertisement. *Ellis* v. *Nott Bower*, 13 T. L. R. 35.

An offence against the regulations made by the text is not, of course, an offence against the Highway Acts; it follows that the powers given by ss. 78 and 79 of the Highway Act, 1835, to apprehend offenders without warrant, do not apply to an offence against these regulations, and that a constable cannot arrest a bicyclist who is riding at night without a lamp. *Hatton* v. *Treeby*, [1897] 2 Q. B. 452; 66 L. J. Q. B. 712; 61 J. P. 567.

(2.) Any person summarily convicted of offending against the regulations made by this section, shall for each and every such offence, forfeit and pay any sum not exceeding forty shillings.

This penalty will be recovered summarily, *i.e.*, on summons before two justices.

Adaptation of Acts.

Adaptation of Lunatic Asylum Acts.

86. For the purpose of adapting the Acts relating to pauper lunatic asylums to the provisions of this Act, the following provisions shall have effect :—

The whole of this section except sub-s. (5) is repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5).

(5.) Any asylum provided in whole or in part at the cost of a county shall for the purposes of this Act be included in the expression "county lunatic asylum."

Application of provisions of 38 & 39 Vict. c. 55, as to local inquiries and provisional orders

87.—(1.) Where the Local Government Board are authorized by this Act to make an inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and in that case, and also in a case where they are required by this Act to cause to be made a local inquiry, sections two hundred

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and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act.

This section is confined to cases of difference which are to be determined by the Local Government Board otherwise than by arbitration: see *per* CAVE, J., *In re Kent County Council and Sandgate Local Board*, [1895] 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. (N.S.), 725; 43 W. R. 601; 59 J. P. 456.

See further as to determination of differences by the Local Government Board, 59 & 60 Vict. c. 9, *post*, and ss. 11 (3) (4) and 63, *ante*, pp. 29, 30, 121.

Sections 293—296 of the Public Health Act, 1875, are as follows:—

"293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

"294. The Local Government Board may make orders as to the cost of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

"295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

"296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts."

The notes to these sections in Lumley's Public Health, p. 389, may be referred to.

(2.) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to the making of provisional orders by the Local Government Board), shall apply for the purposes of this Act as if they were herein re-enacted, and in terms made applicable thereto.

Sections 297 and 298 of the Public Health Act, 1875, are as follows:—

"297. With respect to provisional orders authorized to be made by the Local Government Board under this Act, the following enactments shall be made:—

"(1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates:

"(2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject-matter is one to which a local inquiry is applicable, shall cause to be made

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a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections:

(3.) The Local Government Board may subject to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament:

' (4.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills:

"(5.) An Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any order in council made in pursuance of any of the Sanitary Acts, may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament;

"(6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament;

"(7.) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with:

"(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

"298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs."

See the notes to these sections in Lumley's Public Health, p. 392.

(3.) Provided that, where a provisional order transfers to county councils generally any powers, duties, or liabilities of Her Majesty's Privy Council, a Secretary of State, the Local Government Board, or other Government Department, it shall not be necessary to hold a local inquiry, nor to advertise in any local newspaper.

In the cases mentioned in the text, the advertisements and notices required by s. 297 of the Public Health Act (see the note to sub-s. (2)) are dispensed with.

The provisional order here referred to is that which may be made under s. 10, *ante*, p. 19.

(4.) Where any matter is authorized or required by this Act to be prescribed, and no other provision is made declaring how the

Sect. 87 (4). same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board.

See, for example, s. 57, *ante*, p. 111.

(5.) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

Adaptation of Act to Metropolis.

88. In the administrative county of London the following provisions shall have effect:

(*a.*) The county council may from time to time appoint any fit person to be deputy chairman, and to hold office during the term of office of the chairman, and may pay to such deputy chairman such remuneration as the county council may from time to time think fit;

As to the administrative county of London, see s. 40, *ante*, p. 88.

The chairman may himself receive remuneration under s. 15 (4) of the Municipal Corporations Act, 1882, *post*: but the vice-chairman appointed under section 2 (6), *ante*, p. 4, is not a paid officer.

(*b.*) Subject to any rules from time to time made by the county council, anything authorized or required to be done by, to, or before the chairman, may be done by, to, or before such deputy chairman;

See the last preceding note, and compare the provisions of s. 2 (6), *ante*, p. 4.

(*c.*) * * * * *

This sub-section related to the appointment, qualification, and duties of medical officers of health and sanitary inspectors in the metropolis. It is repealed by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), which substantially re-enacts it: see s. 108 of that Act and the Order of the Local Government Board made under it, dated December 8th, 1891.

Adjustment of law as regards courts, juries,

89.—(1.) The Central Criminal Court Act, 1834, shall be construed as if the county of London were throughout mentioned therein as well as the county of Middlesex.

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(2.) The County Juries Act, 1825, and the Acts amending the same, shall apply to the county of London in like manner as they apply to the county of Middlesex, and persons shall be qualified to serve as jurors, and lists of jurors shall be made out in like manner, so nearly as circumstances admit, as in that county; and the present exemption of inhabitants of the liberty and city of Westminster from serving on juries at quarter sessions for the county of Middlesex shall cease; but nothing in this section shall alter the qualification of persons to serve as jurors within the city of London.

sittings, and legal proceedings in Middlesex and London. 4 & 5 Will. 4, c. 36. 6 Geo. 4, c. 50.

(3.) Subject to rules of court made by the authority having power to make rules for the Supreme Court of Judicature, the county of London and the county of Middlesex shall be deemed to be one county for the purpose of all legal proceedings, civil or criminal, in the Supreme Court or Central Criminal Court, or any other court except the court of quarter sessions, and also for the purpose of the sittings of the Supreme Court, Central Criminal Court, or such other court as aforesaid, or of any judge of any of such courts, and also for the purpose of any jury, and of any court of assize, oyer and terminer, and gaol delivery; and all enactments, rules, orders, and documents referring to Middlesex shall be construed so as to give effect to this section; and rules of court may be from time to time made for the purpose of carrying this section into effect, and for regulating the issue of precepts to the sheriffs of the counties of London and Middlesex for the return of jurors, and the jurors so returned shall have the same powers, duties, and liabilities as if the two counties were one county.

The authority having power to make rules for the Supreme Court consists of any five or more of the following persons, of whom the Lord Chancellor shall be one, viz., the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Probate Division, four other judges of the Supreme Court appointed by the Lord Chancellor, the President of the Incorporated Law Society, and two persons (one of whom must be a practising barrister), also appointed by the Lord Chancellor. 44 & 45 Vict. c. 68, s. 19; 57 & 58 Vict. c. 16, s. 4.

For the purposes of all legal proceedings in any court, save that of quarter sessions, London and Middlesex are to be deemed one county.

Special provisions as to adjustment in the metropolis. 40 & 41 Vict. c. 99.

90. In the adjustment of the property, debts, and liabilities between the counties of Surrey and Middlesex respectively and the county of London, the annual sums payable by the counties of Surrey and Middlesex respectively in respect of certain bridges in pursuance of the Metropolis Toll Bridges Act, 1877, shall be

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deemed to be liabilities which shall be taken into consideration upon such adjustment.

The adjustment here referred to is that made under s. 40, sub-s. (7), *ante*, p. 90.

The Metropolis Toll Bridges Act, 1877, is a local Act, and should be described as 40 & 41 Vict. c. xcix., not as in the margin.

Adjustment as regards the Militia Acts.

91. The Acts relating to the general and local militia of the rest of England and Wales shall apply to the whole of the county of London in like manner as they apply to any county at large; and accordingly Her Majesty shall from time to time appoint a lieutenant of the county of London, provided that nothing in this section shall affect section fifty of the Militia Act, 1882.

45 & 46 Vict. c. 49.

By the 45 & 46 Vict. c. 49, s. 50, the city of London is a separate county for the purposes of the militia.

Savings.

Saving for votes at any parliamentary elections.

92.—(1.) Nothing in this Act, nor anything done in pursuance of this Act, shall alter the limits of any parliamentary borough or parliamentary county, or the right of any person to be registered as a voter at any parliamentary election.

For the definition of a parliamentary voter or parliamentary county, see s. 100, *post*.

(2.) Where by virtue of the provisions of this Act with respect to the county of London, or to urban sanitary districts situate partly within and partly without the boundary of a county, a place situate in a parliamentary county becomes part of the county of a council other than the council having authority over the largest part of the parliamentary county, that is to say, the part which contains the largest number of occupation voters, then, for the purpose of making out and revising the lists of voters, of conducting any parliamentary election, of polling districts, and assigning polling places, and for all purposes of and incidental to such matters, including the payment of expenses, such place shall be deemed to be part of the same county as the said largest part of the said parliamentary county, and the sheriff, council, clerk of the peace, authorities, and officers of that county shall have authority accordingly in the said place, and the provisions of the Registration Act, 1885, with respect to parliamentary counties extending into more county quarter sessional areas than one, shall apply with the necessary modifications.

48 & 49 Vict. c. 15.

The London County Council is the proper authority to certify under 6 Vict. c. 18, s. 55, for the costs of the returning officer in preparing the register of Parliamentary voters for the Parliamentary borough of Deptford, which was

transferred by s. 40, *ante*, from Kent to London, notwithstanding the provisions of this and the preceding sub-section, which retain it in the county of Kent for county Parliamentary purposes; the expression "occupation voters" in the text means "county occupation voters." *Weller* v. *Collins*, 54 J. P. 441; 6 T. L. R. 342. Sect. 92 (2). Note.

The provisions of this Act as to the county of London are contained in s. 40, *ante*, p. 88. As to urban districts situate partly within and partly without the boundary of an administrative county, see s. 50, *ante*, p. 104.

(3.) Provided that the clerk of the peace who receives from the revising barrister the lists of voters in any such place shall supply to any other clerk of the peace or other officer such number of revised lists as he may require for the purpose of making up a register of county electors.

93.—(1.) Nothing in this Act shall alter the metropolitan police district, nor (save as is expressly provided with respect to contributions in substitution for local grants) affect the metropolitan police force, or the raising of money for the same, and nothing in this Act shall affect the police of the city of London. Saving for metropolitan and city police.

As to the metropolitan police district, see note to s. 24 (2) (*k*.) *ante* p. 57, which provides also for contributions in substitution for local grants in that district.

(2.) Nothing in this Act shall authorize any county council to raise any sum for the purposes of any police force by any contribution or rate levied within the metropolitan police district; and nothing in this Act shall alter the authority under the Riot (Damages) Act, 1886, within the metropolitan police district or the city of London. 49 & 50 Vict. c. 38.

As to the rates for the police in the metropolis, see 30 & 31 Vict. c. 67, s. 2, set out *ante*, p. 58.

As to the Riot (Damages) Act, see s. 3 (xiv.), *ante*, p. 13. The authority under that Act is, in the city of London, the common council; in the metropolitan police district, the receiver for the metropolitan police district. The London County Council will not, therefore, exercise jurisdiction under that Act; and the county councils of Middlesex, Surrey, Kent, Essex, and Hertford will only act as local authority in places beyond the metropolitan police district.

94. The grant made by the county council of London in respect of indoor paupers shall be in addition to any payment made out of the metropolitan common poor fund, and nothing in this Act shall affect the enactments relating to the fund. Saving for metropolitan common poor fund.

The grant made by the London County Council in respect of indoor paupers is made under s. 43, *ante*, p. 96.

The metropolitan poor fund was established by the 30 Vict. c. 6. It is a fund raised by contributions from the several unions, parishes, and places in

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the metropolis. These contributions are paid to a receiver appointed by the Local Government Board. The fund is applied in payment of the expenses of lunatic asylums, fever or smallpox hospitals, medicine and medical and surgical appliances supplied by guardians by way of relief, salaries of officers of guardians, district school managers and asylum managers, and officers of dispensaries, registration of births and deaths, vaccination, maintenance of pauper children in schools, etc.; also in payment of the expenses of the maintenance of paupers above the age of sixteen years in any workhouse in the metropolis, the amount to be repaid being at the rate of fivepence per day for each pauper. The Acts which contain provisions relating to the fund are 30 Vict. c. 6; 31 & 32 Vict. c. 122; 32 & 33 Vict. c. 63; 33 & 34 Vict. c. 18; 34 & 35 Vict. c. 15; 39 & 40 Vict. c. 61; 39 & 40 Vict. c. 79, ss. 10, 16, 40, and 43; 42 & 43 Vict. c. 54; 54 & 55 Vict. c. 76, s. 104 (1).

Saving as to Middlesex, Surrey, and Kent.

95.—(1.) Any enactment providing that any magistrate, commissioner, or other officer shall be a justice of the peace for Middlesex, shall be construed to refer to the county of London as well as the county of Middlesex.

See, for example, 2 & 3 Vict. c. 71, ss. 1, 3, which provides that metropolitan stipendiary magistrates shall be justices of the county of Middlesex; and 10 Geo. 4, c. 44, s. 1; 2 & 3 Vict. c. 47, s. 4; 19 & 20 Vict. c. 2, s. 2, which provide that the commissioner and assistant commissioners of police shall be justices for the home counties.

(2.) Where any enactment, deed, instrument, or document refers to the county of Middlesex, Surrey, or Kent, such enactment, deed, instrument, or document shall be construed to apply to the same area to which it would have applied if this Act had not passed, except where such application is inconsistent with this Act, or where the object of such enactment, deed, instrument, or document requires that it shall be construed to apply to the county of London.

Saving for Middlesex Land Registry.

96. Nothing in this Act shall alter the area to which the enactments relating to the registration of land in the county of Middlesex apply, and any reference in those enactments or in any deed, instrument, or document made or issued under or for the purpose of those enactments, to the county of Middlesex, shall be construed to apply to the same area to which it would have applied if this Act had not passed.

The enactments relating to land registry in Middlesex are 7 Anne, c. 20; 25 & 26 Vict. c. 53, s. 104; 37 & 38 Vict. c. 78, s. 8; 38 & 39 Vict. c. 87, ss. 127, 128; 44 & 45 Vict. c. 41, s. 34; 54 & 55 Vict. c. 64.

Saving as to liability for main roads.

97. Nothing in this Act with respect to main roads shall alter the liability of any person or body of persons, corporate or un-

incorporate, not being a highway authority, to maintain and repair any road or part of a road. Sect. 97.

This section was inserted to preserve the liability of persons or corporations to repair roads which have or may become main roads, when such roads were previously repairable by them *ratione tenuræ*, or by prescription, or under an Act of Parliament, such as the Railways Clauses Act, which imposes on railway companies the duty of repairing roads in some cases.

Saving for powers of Commissioners of Inland Revenue and Customs.

98. Notwithstanding anything in the foregoing sections of this Act, the Commissioners of Inland Revenue and the Commissioners of Customs, and the officers of those Commissioners respectively, shall have the same powers in relation to any articles subject to any duty of customs or excise, manufactured, imported, kept for sale or sold, and any premises where the same may be, and to any machinery, apparatus, vessels, utensils, or conveyances used in connection therewith or the removal thereof, and in relation to the person manufacturing, importing, keeping for sale, or having the custody of the same, as they would have had if this Act had not passed, and any licences transferred in pursuance of this Act had continued to be granted by the Commissioners of Inland Revenue.

Definitions.

Definition of "written."

99. All notices and documents required by this Act to be in writing may be in writing or print, or partly in writing and partly in print, and for the purposes of this section "print" includes any mechanical mode of reproduction.

Interpretation of certain terms in the Act.

100. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them ; that is to say :

The definitions contained in this section are incorporated with some exceptions in the Local Government Act, 1894 ; see s. 75 of that Act, *post*.

The expression "county" does not include a county of a city or county of a town :

The expression "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties :

The expression "division of a county," in the provisions of this Act respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division :

The reference here is to s. 64, *ante*, p. 122, which transfers to county councils property held for a division of a county.

The expression "administrative county," means the area for which a county council is elected in pursuance of this Act,

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but does not (except where expressly mentioned) include a county borough :

The administrative counties which were not entire counties at the passing of this Act are those enumerated in s. 46, *ante*, p. 99.

Since the passing of the Act the boundaries of administrative counties have in many cases been altered under s. 54, *ante*, p. 108, without interference with the boundaries of the parliamentary counties.

18 & 19 Vict. c. 120.

The expression "metropolis" means the city of London and the parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent Acts :

45 & 46 Vict. c. 50.

The expression "borough" means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city :

The expression "quarter sessions borough" means a borough having a separate court of quarter sessions and includes a county of a city and a county of a town, subject to the Municipal Corporations Act, 1882 :

The expression "quarter sessions" as respects any county, riding, division, or liberty, means the justices in quarter or general sessions assembled, and includes justices assembled in gaol sessions, annual general sessions, and adjourned sessions, and as respects any borough, means any court of quarter or general sessions held for the borough or for any county of a city or town consisting of the borough, whether held by the recorder or by justices, and as respects the city of London, means the court of the mayor and aldermen in the inner chamber :

The expression "parish" means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part :

The definition of "parish" appears to exclude the definition contained in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 5, which applies only where a contrary intention does not appear. The definition in the text is not incorporated in the Local Government Act, 1894. See s. 75 of that Act, *post*. It should also be pointed out that since the Act last mentioned there are few, if any, instances of parishes situate partly within and partly without a county district. See ss. 1 (3) and 36 (1), (2), of that Act, *post*.

The expressions "parliamentary county," and "parliamentary election," and "parliamentary voters," have the same

meaning as in the Registration Act, 1885, and the Acts therein referred to. Sect. 100.

48 & 49 Vict. c. 15.

By 48 Vict. c. 15, s. 19, the expression "parliamentary county" means a county returning a member or members to serve in Parliament, and where a county is divided for the purpose of such return means a division of such county.

By 41 & 42 Vict. c. 77, s. 4, amended by 48 Vict. c. 15, s. 1 (3), the term "parliamentary voter" means a person entitled to be registered as a voter, and when registered to vote at the election of a member or members to serve in Parliament for a parliamentary borough or county.

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State :

The expression "Treasury" means the Commissioners of Her Majesty's Treasury :

The expression "Bank of England" means the Governor and Company of the Bank of England :

The expression "existing" means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day :

For the appointed day, see s. 109, *post*

The expression "guardians" means guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other bodies of persons performing under any local Act the like functions to guardians under the Poor Law Amendment Act, 1834 : 4 & 5 Will. 4, c. 76.

Guardians are now elected under the Local Government Act, 1894. See s. 20 of that Act, *post*.

The expression "poor law union" means any parish or union of parishes for which there is a separate board of guardians :

The expressions "district council" and "county district" mean respectively any district council established for purposes of local government under an Act of any future session of Parliament, and the district under the management of such council, and until such council is established, mean respectively—

(*a*) as regards the provisions of this Act relating to highways and main roads, a highway authority and highway area ; and

(*b*) save as aforesaid, an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and the district of such authority : 38 & 39 Vict. c. 55.

This definition became necessary when it was resolved to omit from this Act the clauses relating to district councils.

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District councils have now been established by the Local Government Act, 1894. See s. 21 of that Act, *post.* page – 619.

The expression "highway area," means, as the case may require, an urban sanitary district, a highway district, or a highway parish not included within any highway or urban sanitary district :

The expression "highway authority" means, as respects an urban sanitary district, the urban sanitary authority, and as respects a highway district, the highway board, or authority having the powers of a highway board, and as respects a highway parish, the surveyor or surveyors of highways or other officers performing similar duties :

It should be borne in mind that by virtue of ss. 35 (4) and 38 (3), *ante*, boroughs are included in the definition of an urban sanitary district in the Highway Act, 1878, and the council of the borough is therefore the highway authority.

Under the Local Government Act, 1894, rural district councils have, with few exceptions, become the highway authorities for their respective districts. See s. 25 of that Act, *post.*

The expression "urban authority" means, until the establishment of district councils as aforesaid, an urban sanitary authority; and after their establishment, the district council of an urban county district :

By the Public Health Act, 1875, s. 6, urban authorities were in a borough, the town council ; in a local government district, the local board ; and in an Improvement Act district, the Improvement Commissioners.

By the Local Government Act, 1894, s. 21 (3), *post*, it is provided that urban sanitary authorities, other than borough councils, shall be called urban district councils and their districts urban districts.

The expression "rural authority" means, until the establishment of district councils as aforesaid, a rural sanitary authority ; and after their establishment, the district council of a rural county district :

By the Public Health Act, 1875, s. 9, the area of a union outside an urban district was a rural sanitary district in which the guardians were the rural sanitary authority.

Under the Local Government Act, 1894, the rural sanitary authority is the rural district council, which is a distinct body from the guardians. See ss. 21 and 24 of that Act, *post.*

The expression "person" includes any body of persons, whether corporate or unincorporate :

Any expression referring to the value of any parish, borough, or area as ascertained by the standard or basis for the county rate or contributions shall, where any rateable value has been fixed by agreement between the councils of any county and county boroughs, be that value, and subject thereto, shall, in the case of any parish, borough, or area for which there is no such standard or basis, refer to the total rateable value as determined by the last valuation lists, or if there is no valuation list, by the last poor rates for such parish or the parishes comprised in such borough or area ; and where an area is authorized or directed by this Act to be assessed to any contributions or rates, the same shall, unless otherwise provided by law, be assessed according to the standard or basis for the county rate : Sect. 100.

See as to this definition, s. 33, *ante*, p. 72. See also s. 26 (2).

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents ; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority ; and the expression "property" shall further include, in the case of the county of Chester, any surplus revenue of the River Weaver Trust, which is or would but for this Act be payable to the quarter sessions :

As to the appointed day, see s. 109, *post*.
As to the transfer of property, see s. 64, *ante*, p. 122.
As to the River Weaver Trust, see s. 69 (12), *ante*, p. 135.

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities :

The expression "duties" includes responsibilities and obligations :

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or

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subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose :

The expression "powers, duties, and liabilities," includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act :

The expression "expenses" includes costs and charges :

The expression "costs" includes charges and expenses :

The costs of assizes and of quarter and petty sessions include such of the following costs as are applicable, that is to say, the costs of maintaining and providing the courts and offices and the judges' lodgings, the salaries and remuneration of a chairman of quarter sessions, clerks of assize, clerks of the peace, clerks of the justices, and other officers, the costs of the jury lists, the costs of rewards ordered to be paid by the court, the costs of prosecutions, including the costs of the defendants' witnesses, and all other costs incidental to the assizes, quarter sessions, petty sessions, or the judges, but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes, except in the case of prisoners committed for trial from the borough :

A quarter sessions borough may be a county borough ; see the definition, *supra*. Quarter sessions boroughs are to contribute towards the cost of assizes, etc., under ss. 32 (3) (*a*), 35 (5), 38 (5), and 39 (1), *ante*.

The expression "assizes" includes the Central Criminal Court :

The expression "pension" includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer :

The expression "office" includes any place, situation, or employment, and the expression "officer" shall be construed accordingly :

The expression "the divisions of Lincolnshire" means the parts of Holland, the parts of Kesteven, and the parts of Lindsey :

19 & 20 Vict. c. 69.

The expression "County and Borough Police Act, 1856," means the Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter sixty-nine, intituled "An Act to render more effectual the Police in Counties and Boroughs in England and Wales," and the expression "County and Borough Police Acts" means the County and Borough Police Act, 1856, and the Acts therein recited :

The expression "main road" when used in relation to the district of any highway or road authority, means so much of the main road as is situate within the district of such authority. Sect. 100

In relation to the election of county councillors, the day of nomination shall be deemed to be the day on which the names of the persons nominated are fixed on the town hall or other conspicuous place.

As to the meaning of this provision, see the note to the Municipal Corporations Act, 1882, Sched. 3, Part II., r. 15, *post*.

101. This Act shall not extend to Scotland or Ireland. Extent of Act.

102. This Act may be cited as the Local Government Act, 1888. Short title.

PART VI.

TRANSITORY PROVISIONS.

Except where it otherwise appears by the notes to the several sections of this Part of the Act, these transitory provisions, though unrepealed, are spent.

First Election of County Councillors.

103.—(1.) The first election of county councillors under this Act shall be held in the month of January next after the passing of this Act on such day in each county not earlier than the fourteenth day of January as the returning officer for that county may fix, and the returning officer shall publish notice of such day in the preceding month of December, and the day so fixed shall be deemed for the purposes of the first election to be the ordinary day of election of county councillors. First election of county councillors.

(2.) The sheriff of each county shall be the returning officer for such first election, but if the sheriff desires to be a candidate at such election the county quarter sessions on his application may appoint another person to be the returning officer, and the person so appointed shall, for the purpose of such election, have the powers and duties of the sheriff.

(3.) At the first election the returning officer may, if it appears to him necessary, divide an electoral division into polling districts, so however that every polling district shall be an area or a combination of areas for which separate parts of the register of electors are made out, and he shall settle and give proper notice of the places at which the poll for each electoral division, or district of a division, shall be taken.

Sect. 103 (4).

(4.) The clerk of the peace, who will by virtue of this Act become the clerk of the county council when elected, shall make up the county register and division registers of the county electors for the purposes of the first election, and shall deliver the same to the returning officer, and every clerk of the peace who has in his custody any revised lists of electors required for making up such registers, shall supply to the above-mentioned clerk of the peace such number of copies of those lists as he may require for the purpose of making up the said registers.

(5.) The returning officer shall send to the clerk of the peace, who will, by virtue of this Act, become the clerk of the county council, the names of the persons elected, and shall send to each person elected a county councillor notice of his election, accompanied by a summons to attend the first meeting of the provisional council fixed by this Act at such time and place as the returning officer may fix.

(6.) The costs properly incurred by the returning officer in reference to the first election, and in reference to such first meeting of the provisional council, shall be defrayed as expenses of the county council, and may be taxed on an application made by or by direction of the provisional council.

(7.) In the administrative county of London, the returning officer for the first election shall be such fit person as the Local Government Board may appoint, and such returning officer shall, for the purposes of such election, have the powers and duties of the sheriff, and any sheriff, under-sheriff, officer of the London School Board, or other public officer having authority in the metropolis, and being in possession of any ballot boxes or other fittings or arrangements for an election, shall permit such returning officer to use the same for the purposes of such first election.

(8.) Such returning officer shall make up the county register and division registers of the county electors for the purposes of the first elections, and shall make them up out of the lists of voters made out in the year one thousand eight hundred and eighty-eight for the City of London, and for such portions of the counties of Middlesex, Surrey, and Kent, as are comprised in the metropolis, and shall make the necessary alteration in the forms of those lists, and the secondary of the City of London, and the town clerks within the meaning of the Registration Acts for the parliamentary boroughs in the administrative county of London, and the clerks of the peace of Middlesex, Surrey, and Kent, shall deliver to the said returning officer such number of copies of the revised lists of electors as he may require. The returning officer for the administrative county of London shall send the names of the persons elected to the clerk of the Metropolitan Board of Works.

(9.) The court of quarter sessions in any county, and the Metropolitan Board of Works in the Metropolis, shall advance to the returning officer such sum as is authorized by this Act to be advanced by county councils to returning officers for the purposes of an election. Sect. 103 (9).

(10.) The sheriff having authority in any administrative county, or the largest part thereof, shall for the purposes of this Act be deemed to be the sheriff of that county.

104.—(1.) The county councillors of a county council elected at the first election shall retire from office on the ordinary day of election in the third year after the passing of this Act, and their places shall be filled by election. Retirement of first county councillors.

The ordinary day of election in the third year after the passing of this Act was November 1st, 1891. This date was subsequently altered to March 8th, 1892. See the County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1.

(2.) Of the first county aldermen one-half shall retire on the ordinary day of election of county aldermen in the third year next after the passing of this Act, and the one-half who are so to retire shall be determined by ballot by the provisional councillors at the time of the election of the county aldermen: Provided that where the total number of aldermen is not divisible by two the larger half shall first retire.

The county aldermen number one-third of the number of councillors (see s. 14, sub-s. (2), of the Municipal Corporations Act, 1882, *post*), except in London, where the number is one-sixth. See s. 40, sub-s. (5), *ante*, p. 89.

The one-half who were first to retire were determined by ballot, and they retired on March 16th, 1892. See the County Councils (Elections) Act, 1891, *post*.

(3.) The remaining half of the county aldermen shall retire on the ordinary day of election of county aldermen in the sixth year next after the passing of this Act.

This took place on March 16th, 1895.

(4.) In this section the word "year" shall be construed to mean calendar year.

105.—(1.) The members of a county council first elected under this Act shall not enter on their ordinary duties or become the county council until the first day of April next after their election, or such other day as on the application of the provisional council the Local Government Board may appoint. Preliminary action of county councillors as provisional council.

Sect. 105 (2).

(2.) Such members shall, on the second Thursday next after the day fixed for the first election, and thenceforward from time to time until the day above mentioned in this section, meet and act as a provisional council for arranging to bring this Act into operation.

(3.) The provisional councillors shall at their first meeting elect one of their number to be chairman of that meeting and of the second meeting, and shall then at that meeting, or some adjournment thereof, proceed to elect the county aldermen in like manner as if they were a fully constituted county council, and such county aldermen shall be summoned to attend at the second meeting of the provisional council, and shall form part of the provisional council both for the election of chairman and all other purposes.

(4.) The provisional council shall, at their second meeting, or some adjournment thereof, proceed to elect as their chairman a person qualified to be chairman of the county council, and may from time to time fill any vacancy in the office of such chairman, and the person elected chairman shall be chairman of the provisional council, and also on and after the appointed day of the county council, and the term of office of such chairman shall end on the next ordinary day of election of chairman.

(5.) This enactment shall extend to the vice-chairman and deputy-chairman.

First proceedings of provisional council.

106.—(1.) The provisional council after disposing of the preliminary business shall proceed to provide for bringing the various provisions of this Act into full operation on the appointed day or days, and to make the necessary arrangements with the quarter sessions, and with reference to the distribution of duties among the different officers, and to provide for all matters which appear necessary or proper for enabling the county council as constituted under this Act to execute their duties, and for giving full effect to this Act.

(2.) The provisions of this Act, and the enactments applied by this Act with respect to the proceedings of the county council, shall apply to the proceedings of the provisional council, and any act of the provisional council may be signified under the hand of the chairman and any two members of the council present at the meeting, and countersigned by the officer acting as their clerk.

(3.) The provisional council of a county shall be entitled to use the buildings belonging to the quarter sessions of that county, so that they do not interfere with the holding of any court, and the clerk of the peace and his officers, and the officers of the quarter sessions shall, if required, act as the officers of such provisional council, and, further, the provisional council may from time to time

hire such buildings and appoint such interim officers as appear to them necessary for the performance of their duties, and the costs incurred in the hiring of such buildings and payment of such officers or otherwise in the performance of their duties shall be defrayed as costs properly incurred by the county council. Sect. 106 (3).

(4.) There shall be paid out of the county rate to the clerk of the peace of the county, such reasonable remuneration as the court of quarter sessions may award for extra services rendered by him in bringing this Act into operation, and in acting as clerk of the county council, until his salary for acting as such clerk is fixed in manner provided by this Act.

(5.) In the metropolis the foregoing provisions with respect to the use of buildings and the action of officers shall apply as if the Metropolitan Board of Works were the quarter sessions of the county, and as if any quarter sessions for the counties of Middlesex and Surrey were the quarter sessions of the county of London, but the provisional council for the administrative county of London shall make arrangements with the provisional councils of Middlesex and Surrey as respects the use of buildings and the employment of the clerk of the peace and his officers and the officers of the quarter sessions.

(6.) The provisional council shall have the same power of levying contributions for the purpose of their costs and for the future costs of the county council as they would have if they were constituted a county council under this Act.

(7.) The quarter sessions of every county and liberty, and in the metropolis the Metropolitan Board of Works, shall, by the appointment of committees, or the holding of sessions and meetings, and otherwise, make such provisions as are necessary or proper for making arrangements with the provisional council for carrying this Act into effect; and the quarter sessions may, after the appointed day, meet in like manner as if this Act had not passed, for the purpose of receiving reports from the committees and county officers for the period subsequent to the last quarter sessions and prior to the appointed day, and for making the ordinary quarterly payments, the usual sessional orders, and otherwise concluding and winding up the business of the county.

General Provision as to First Elections.

107.—(1.) If at the first election a person is elected a county councillor for more than one electoral division of a county, his choice as to the division for which he will serve shall be made by writing addressed to the returning officer, and if not so made, the returning officer shall, on or before the day for the first meeting Casual vacancies at first elections.

Sect. 107 (1).

of the provisional council, determine the division for which such person shall sit.

(2.) Any casual vacancy arising at the first election from a person being elected for more than one electoral division, or being elected a county alderman, or from a failure of election or otherwise, may be filled in like manner as a casual vacancy in the county council may be filled, and the sheriff or other officer authorized to act as returning officer at the first election shall be the returning officer at any election held to fill a casual vacancy before the appointed day.

(3.) Such number of members as have been elected for a county council at the first election shall, subject to any order of the Local Government Board to the contrary under this Act proceed to act as a provisional council under this Act, notwithstanding any vacancy or vacancies arising from failure of election or otherwise.

(4.) In case of equality of votes at the first or second meeting of a provisional county council, the chairman of the meeting shall have a second or casting vote, and where on the selection of the chairman of the meeting an equal number of votes is given to two or more persons, the meeting shall determine by lot which of those persons shall be the chairman.

(5.) The first meeting of the county council shall be held on the day appointed for the council coming into office, and shall be convened by the chairman of the provisional county council.

(6.) Such first meeting, and also the first meeting of the provisional county council, shall be convened in like manner as meetings of the county council are required by this Act, and the enactments applied by this Act, to be convened, and as if the person convening the same were the chairman.

Power of Local Government Board to remedy defects.

108.—(1.) If from any cause there is no returning officer able to act in any county at the first election of a county council, or no register of electors properly made up, or no proper election takes place, or an election of an insufficient number of persons takes place, or any difficulty arises as respects the holding of the first election of county councillors, or as to the first meeting of a provisional council, the Local Government Board may by order appoint a returning officer or other officer, and do any matter or thing which appears to them necessary for the proper holding of the first election, and for the proper holding of the first meeting of the provisional council, and may, if it appears to them necessary, direct a new election to be held, and fix the dates requisite for such new election; any such order may modify the provisions of this Act and the enactments applied by this Act so far as may

appear to the Board necessary for the proper holding of the first election and first meeting of the provisional council.

(2.) The Local Government Board in the case of the first election may also authorize an electoral division to return two or more members, in any case where the difficulties arising out of the registers of voters and the population of any area appear to render it necessary, and may also authorize portions of two or more county districts, or wards for which a separate register can be made, to be united for the purpose of an electoral division.

(3.) The Local Government Board, on the application of a county council or provisional council, may, within six months after the day fixed for the first election of the councillors of such council, from time to time, make such orders as appear to them necessary for bringing this Act into full operation as respects the council so applying, and such orders may modify any enactment in this or any other Act, whether general or local and personal, so far as may appear to the Board necessary for the said purpose.

The provisions of this sub-section were continued in force by the Expiring Laws Continuance Acts, 1889 and 1890, but finally expired on December 31st, 1891.

(4.) The Local Government Board may also, if satisfied that an election cannot properly be held for any county council by reason of the electoral divisions not having been duly made, cause such steps to be taken as they consider necessary for constituting such electoral divisions and making up the registers of electors.

Appointed Day.

Appointed day.

109.—(1.) Subject as in this Act mentioned, the appointed day for the purposes of this Act shall in each county be the first day of April next after the passing thereof, or such other day, earlier or later, as the Local Government Board (but after the election of county councillors for such county on the application of the provisional council or county council) may appoint, either generally or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections, or for different counties.

(2.) Any enactment of this Act authorizing anything to be done by the Commissioners of Inland Revenue or the Local Government Board, or relating to the registration of electors, or to the elections, or to any matter required to be done for the purpose of bringing this Act into operation on the appointed day, shall

Sect. 109 (2).

come into effect on the passing of this Act; but save as aforesaid and save so far as there may be anything in the context inconsistent therewith, any enactment of this Act shall come into operation on the appointed day.

Transitional Proceedings.

Current rates, jury lists, etc.

110.—(1.) Every rate and precept for contributions made before the appointed day may be levied and collected, and proceedings for the enforcement thereof taken in like manner as nearly as may be as if this Act had not passed.

(2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had in like manner as nearly as may be as if this Act had not passed, and every officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office and be bound to perform the same duties and render the same accounts, and be subject to the same liabilities, as before the appointed day.

(3.) In the counties of Middlesex, Kent, and Surrey, the lists of jurors in force on the appointed day shall continue in force until the lists which are next made come into force, and all jurors summoned before the appointed day shall attend that day as if summoned in accordance with this Act.

(4.) All proceedings, legal and other, commenced before the appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and may be so carried on by the county council in substitution for the authorities by whom such proceedings were commenced. Every legal proceeding commenced before the appointed day may be amended in such manner as may appear necessary or proper in order to bring the same into conformity with the provisions of this Act.

(5.) Every militiaman enlisted before the appointed day shall continue liable to serve in the same corps as if this Act had not passed.

Transitory provisions as to lunatic asylums.

111.—(1.) Any committee for providing an asylum for pauper lunatics, or any committee of visitors of an asylum for pauper lunatics holding office on the day fixed for the first election of county councillors under this Act, shall continue to hold office until the expiration of one week after the county council have elected a committee for the like purposes and no longer.

(2.) Any committee elected by the county council shall come into office at the expiration of the said week, and shall be deemed

to be a continuance of the old committee of visitors elected by the quarter sessions. Sect. 111 (2).

(3.) All visitors of an asylum appointed on behalf of a borough, or subscribers who are visitors at the date of the first election of the county council under this Act, shall continue to be such visitors until the annual election of visitors which happens next after such election.

(4.) Anything done in pursuance of the enactments relating to pauper lunatics by the quarter sessions or any committee thereof before the appointment of any committee by the county council shall have effect as if it had been done by the county council or by a committee elected by the county council.

(5.) Where there is a joint committee of visitors for two or more counties or boroughs, this section shall apply to each portion of the committee appointed by the justices of any such county, or by the justices or council of any such borough, in like manner as if it were a separate committee.

Transitory provisions as to Contagious Diseases (Animals) Acts.

112.—(1.) Every executive committee appointed by the quarter sessions under the Contagious Diseases (Animals) Acts, and holding office on the appointed day, shall continue to hold office until the expiration of one week after the county council shall have appointed a committee for the like purpose, and no longer.

(2.) An executive committee appointed by the county council shall come into office at the expiration of the said week, and shall be deemed to be a continuance of the outgoing executive committee.

(3.) Every sub-committee of an executive committee under the said Acts holding office on the appointed day shall continue in office until a sub-committee for the like purposes shall be appointed by the county council, or by the executive committee appointed by the county council.

(4.) Every committee and sub-committee continued in office by virtue of this section shall, during such continuance, have all such powers as it would have had if this Act had not been passed.

Transitory Provisions as to Metropolis.

Transitory provisions as to sheriffs of London and Middlesex.

113.—(1.) The first sheriffs appointed by Her Majesty for the county of Middlesex and for the county of London may be nominated and appointed at the same time as the sheriff of any other county in England, and each of such sheriffs when appointed may make the declaration, and shall enter upon office, in like manner and at the like time as any other sheriff.

Sect. 113 (2).

(2.) Upon the first sheriff of Middlesex so entering into office, the sheriffs of London shall cease to have jurisdiction in the county of Middlesex.

(3.) Upon the first sheriff of the county of London so entering into office, the area which will become that county shall, for the purpose of the sheriff, be considered to be the county of London, and the sheriffs of the city of London shall cease to have any jurisdiction in the said area, and the sheriffs of Surrey and Kent shall cease to have any jurisdiction within the said area.

(4.) Provided that for the purpose of any sessions of the peace held by the justices of the counties of Middlesex, Surrey, and Kent, after the sheriff has so entered into office but prior to the date at which the justices of the county of London will come into office, the sheriffs of Middlesex, Surrey, and Kent, shall continue to act and have jurisdiction as such sheriffs throughout those portions of the metropolis which originally formed part of those counties.

(5.) Lists of prisoners, writs, process, and particulars, and all records, jury lists, books, and matters appertaining to the county of Middlesex, and to such part of the counties of Surrey and Kent as are included in the metropolis, shall be delivered, turned over, transferred, and signed in like manner in all respects, so nearly as circumstances admit, as is required to be done upon a new sheriff coming into office, in like manner as if the sheriff of Middlesex appointed by Her Majesty were, as respects such part of the county as will, after the appointed day, be the county of Middlesex, the new sheriff in succession to the sheriffs of London, and as if the sheriff of the county of London appointed by Her Majesty were, as respects the area of the metropolis exclusive of the city, the successor to the sheriffs of London, Surrey, and Kent.

(6.) If any question arises as to the delivery, turning over, transfer, or signature under this section, or any other matter relating to the change in the office of sheriff in the metropolis, such question shall be referred to the Lord High Chancellor, whose decision shall be final.

As to existing coroners for Middlesex, Surrey, and Kent.

114.—(1.) The persons who, at the passing of this Act, are coroners for any districts which become wholly or partly, by virtue of this Act, part of the county of London, shall continue to act for such districts until otherwise directed as hereinafter mentioned, and while so continuing to act shall, as respects such part of their districts as is within the county of London, be deemed to be coroners for the county of London, and the amount payable in respect of the salaries, fees, and expenses of any such coroner, where the district is partly within and partly without the county of London,

shall be apportioned between the counties in which such district is situate. Sect. 114 (1).

(2.) In the case of any coroner's district being situate partly within and partly without the county of London, the county councils of the counties in which such district is situate shall arrange for the alteration in manner provided by law of the district, so that on the next avoidance of the office of coroner, or any earlier date fixed when the alteration is made, the coroner's districts shall not be situate in more than one county.

(3.) For the purposes of this Act respecting compensation, the coroners shall be deemed to be officers of the quarter sessions of the county for which they are coroners.

As to commission of the peace for London.

115.—(1.) A commission of the peace for the county of London may be issued at any time after the passing of this Act, which shall be provisional until the appointed day, and the justices acting under such commission shall, until the appointed day, act provisionally for the purpose of bringing this Act into operation, and may from time to time be convened and meet and conduct their proceedings in like manner in all respects as if they were the justices of a county, and they shall proceed to make such arrangements as appear necessary or proper for bringing this Act into operation, and may for that purpose appoint any committee or committees, either alone or jointly with any quarter sessions or provisional council.

(2.) Nothing in this section shall confer on such justices any power to act as justices or as quarter sessions, nor any judicial jurisdiction, nor constitute any part of the metropolis a county for the purposes of justices and quarter sessions until the appointed day.

(3.) Any sessions of the peace held after the appointed day may be convened by the said justices acting provisionally before the said day, and the first sessions of the peace held after the appointed day shall be deemed to be legally held, although no justice there present has taken the oaths required by law to be taken by justices of the peace, and any justice may nevertheless take the oaths at such sessions.

(4.) The clerk of the peace for Middlesex holding office at the passing of this Act shall act as the clerk to the said justices for the county of London when acting provisionally in pursuance of this Act.

(5.) The fees payable to the clerk of the peace and clerks of the justices, and other officers and authorities in Middlesex, at the passing of this Act, shall be the first fees which may be taken in the county of London by the clerk of the peace, the clerks to the justices, and other officers and authorities in the county of London,

Sect. 115 (5). and may continue to be taken until they are abolished or altered in manner provided by law with respect to the abolition and alteration of such fees.]

As to places for holding quarter sessions.

116. Until a scheme respecting the holding of courts of quarter sessions in the county of London comes into force, the following regulations shall be observed :—

As to this scheme, see the note to s. 42 (7), *ante*, p. 94.

(*a.*) Courts of quarter sessions for the trial of persons charged with offences shall be held at Clerkenwell and Newington, and courts of quarter sessions for appeals and other business shall be held at the places in London at which sessions are usually held at present, or at such of the said places as the county council may from time to time appoint ; and courts of quarter sessions for the said purposes shall be respectively held at the same times, as nearly as may be, at each such place as heretofore ;

(*b.*) Cases triable at quarter sessions for the county of London shall (save as otherwise directed by the court of quarter sessions) be heard and determined, if they arose on the north side of the River Thames, at Clerkenwell, and if they arose on the south side of the River Thames, at Newington ; and persons shall be committed for trial, and bail and recognizances shall be taken, and depositions, recognizances, documents, and things transmitted in such manner as appears necessary for carrying into effect this section, but a committal for trial or recognizance shall not be invalidated, nor shall the powers of the quarter sessions be affected by any disregard of this enactment, and every court of quarter sessions held in and for the county of London at whatever place such court is held shall have complete power to hear and determine any case arising in the county of London, notwithstanding an objection that the case ought to be heard and determined at the sessions held at another place in the county of London.

(*c.*) Every sessions shall, as the circumstances require, be deemed to be quarter or general sessions, and if held at different places to be original sessions or adjourned sessions, and if held simultaneously at two or more places to be divided courts of the same sessions ;

(*d.*) Every matter, civil or criminal, arising before the appointed day which would have been heard, tried, determined, or otherwise dealt with by any court of quarter sessions or

assessment sessions, or any justices or otherwise, may be heard, tried, determined, and dealt with in like manner as if this Act had come into operation before the said matter arose, and recognizances existing at the appointed day shall have effect and be enforced in like manner, so nearly as circumstances admit, as they would have been if this Act had not passed; and where any trial, motion, or other matter has been adjourned from any previous court of quarter sessions, assessment sessions, special sessions, or petty sessions, and would if this Act had previously come into operation have been heard, determined, or otherwise dealt with at sessions held under this Act, the same shall be heard and determined and otherwise dealt with at the sessions held under this Act in like manner as if the same were held by the same justices by whom the same would have been held if this Act had not passed. Sect. 116 (*d*).

117.—(1.) Nothing in this Act shall prevent a person who is an existing justice of the peace for any of the counties of Middlesex, Surrey, or Kent, from continuing to be a justice of the peace for that county, and every such person and also every person who at the appointed day is a justice of the peace for the liberty and city of Westminster, the liberty of the Tower of London, or any liberty which by virtue of this Act becomes part of the county of London, shall, if and so long as he is resident or occupies property in the county of London, be a justice of the peace for that county in like manner as if he were assigned by a commission of the peace, but a person shall not after the passing of this Act be named in any commission as a justice of the peace for any liberty which by virtue of this Act becomes part of the county of London. As to existing justices in Metropolis.

A justice for Middlesex appointed before the passing of this Act will continue to be such justice, and as long as he is resident or occupies property in the county of London, he will also be a justice for that county; so also as to justices of Surrey and Kent. Justices are not to be appointed for liberties in London.

As to the merger of liberties in the county, see s. 48, *ante*, p. 102.

(2.) Provided always, that the provisions of this section shall not apply to any justice of the peace of the counties of Surrey, Kent, or Middlesex, or either of them, so long as he shall hold any office connected with any court of quarter sessions of the county of London.

(3.) The persons who at the passing of this Act are members of

Sect. 117 (3). a visiting committee of any prison situate in the county of London shall continue to form such visiting committee until a new visiting committee has been appointed in accordance with a rule of the Secretary of State.

The Prison Act, 1877 (39 & 40 Vict. c. 21), s. 13, provides that a visiting committee shall be annually appointed for every prison under that Act, consisting of such number of persons, being justices of the peace, to be appointed at such time and by such court of quarter sessions, or such bench or benches of magistrates, as the Secretary of State, having regard to the locality of the prison, to the justices theretofore having jurisdiction over such prison, and to the class of prisoners to be confined in such prison, may from time to time by any general or special rule prescribe.

See the rules made by the Secretary of State, dated March 10th, 1890, S. R. O. 1890, p. 930.

(4.) Where a person is a justice of the peace in and for the county of London by reason of his being personally declared by this Act to be a justice of the peace in and for the county of London, the Lord High Chancellor shall have the same power of removing such person from being a justice of the peace as if he were named in a commission of the peace.

A justice is personally declared by this Act to be a justice of the county of London by s. 95 (1), *ante*, p. 170, and by sub-s. (1) of this section.

Any justice may be discharged from the commission by writ under the Great Seal ; 3 Burn's Justice, 123.

(5.) The existing assistant judge of the court of the sessions of the peace for the county of Middlesex shall cease to be chairman of that court, and shall be the first chairman of the court of quarter sessions of the county of London, and while he holds his office he shall receive such salary, not less than what he has hitherto received, as Her Majesty, on the petition of the county council, may assign, and the enactments respecting the appointment and payment of a deputy assistant judge or of a person to preside at a second court at any sessions in the county of Middlesex shall apply to the county of London, and upon the said assistant judge ceasing to hold office shall be repealed.

The enactments hereby repealed as to the appointment and payment of a deputy assistant judge, etc., in Middlesex are the 22 & 23 Vict. c. 4, s. 3 ; 37 & 38 Vict. c. 7, ss. 2—4. As to future appointments of chairman and deputy chairmen of quarter sessions in London, see s. 42, *ante*, p. 93.

(6.) Nothing in this Act shall affect existing deputy lieutenants appointed by the Constable of the Tower of London as Lord Lieutenant of the Tower Hamlets.

Existing Officers. Sect. 118 (1).

Existing clerks of the peace and other officers.

118.—(1.) A person holding office at the appointed day as clerk of the peace of a county, besides continuing to be such clerk of the peace shall, subject to the provisions respecting certain counties in this Act mentioned, become the clerk of the county council, and if appointed before the passing of this Act shall, notwithstanding anything in this Act, hold his offices by the same tenure and have the same power of appointing and acting by a deputy as heretofore in his capacity of clerk of the peace.

An "existing" clerk of the peace became clerk of the council, except in the cases specially mentioned in this section.

Appointments of the clerk of the peace and deputy clerk made after the passing of this Act are made under s. 83, *ante*, p. 158, by the standing joint committee.

An "existing" clerk of the peace will appoint his own deputy as hitherto. See 37 Hen. 8, c. 1 ; 1 Will. & M. c. 21, s. 4.

(2.) A person holding office at the passing of this Act as clerk of the peace, clerk of the general assessment sessions, or salaried clerk of a petty sessional division, shall be deemed to be an existing officer within the meaning of the provisions of this Act relating to compensation to existing officers who suffer pecuniary loss.

The provisions as to compensation are contained in s. 120, *post*.

It will be remembered that the quarter sessions for the county of London supersede the general assessment sessions. See s. 42 (10), *ante*, p. 95.

As to petty sessional divisions and clerks, see s. 84, *ante*, p. 161; in London, s. 42 (8), *ante*, p. 95, and sub-s. (11), *infra*.

(3.) The person who at the appointed day is clerk of the peace for Sussex, if he held office at the passing of this Act, shall be clerk of the peace for East Sussex and clerk of the peace for West Sussex, and clerk of the peace for the justices of Sussex in general sessions assembled.

(4.) Such person shall also be clerk of the county council for East Sussex and clerk of the county council for West Sussex, and shall, notwithstanding anything in this Act, hold his offices by the same tenure, and have the same power of appointing and acting by a deputy as heretofore in his capacity of clerk of the peace.

(5.) The person who, at the appointed day, is clerk of the peace for Suffolk, if he held office at the passing of this Act, shall be clerk of the peace for East Suffolk and clerk of the peace for West Suffolk, and clerk of the peace for the justices of Suffolk in general sessions assembled.

Sect. 118 (6). (6.) Such person shall also be clerk of the county council for East Suffolk and clerk of the county council for West Suffolk; and shall, notwithstanding anything in this Act, hold his offices by the same tenure and have the same power of appointing and acting by a deputy as heretofore.

As to future clerks of the peace in Sussex and Suffolk, see s. 83, sub-ss. (7), (8), *ante*, p. 160.

(7.) This section shall apply to the persons holding office at the appointed day as clerk of the peace and deputy clerks of the peace for the county of Lancaster, in like manner as it applies to clerks of the peace of other counties.

See s. 83 (9), *ante*, p. 160.

(8.) The person who, at the appointed day, is clerk of the peace for Middlesex, if he held office at the passing of this Act, shall continue to be that clerk, and, subject to the provisions of this Act, shall also be the first clerk of the peace for the county of London, and shall, notwithstanding anything in this Act, hold the office of clerk of the peace for each of the said counties by the same tenure and have the same power of appointing and acting by a deputy as heretofore.

(9.) The person who, at the appointed day, is the clerk of the gaol sessions in Yorkshire or Lincolnshire shall, if he holds office at the passing of this Act, continue to be that clerk, and shall also be the first clerk of the joint committee for the county councils of the three ridings or divisions of those counties, and shall hold that office by the same tenure and have the same power (if any) of acting by a deputy as heretofore.

As to the gaol sessions and the joint committee in Yorkshire and Lincolnshire, see s. 46 (2), *ante*, p. 99.

(10.) If the person who at the appointed day is clerk of the peace for Surrey held office at the passing of this Act, then so long as he holds that office,—

(*a*.) He shall, besides continuing to be that clerk, continue to be clerk of the peace at any quarter sessions held for the county of London at Newington, and be, for the purpose of all business transacted at those quarter sessions, deemed to be the clerk of the peace for the county of London, and as such shall have the same power of appointing and acting by a deputy as heretofore in his capacity of clerk of the peace for Surrey; and

(*b.*) Such of the records of the county of Surrey as at the passing of this Act are in his custody at Newington, and, if this Act had not passed, would have remained in that custody, shall, subject to any order of the court of quarter sessions, continue to be kept in his custody at Newington. Sect. 118 (10).

(11.) The persons who at the appointed day are salaried clerks for the petty sessional divisions, wholly or in part in the county of London shall, if appointed before the passing of this Act, be as to so much of such divisions as are in the county of London, the first salaried clerks of the petty sessional divisions of the county of London, and as to much of such divisions as are not in the county of London, such persons shall also be the first salaried clerks of the petty sessional divisions of the counties in which such parts are situate.

Each portion of the existing division became a separate petty sessional division. See s. 42 (8), (9), *ante*, p. 95.

(12.) In the case of any of the following persons who, by virtue of this Act, become clerk of the peace for the county of London or salaried clerks of petty sessional divisions for the county of London, or who, for the purpose of all business transacted at the quarter sessions, held for the county of London at Newington, is to be deemed to be the clerk of the peace for the county of London, or who become clerk of the peace for East Sussex and clerk of the peace for West Sussex, or clerk of the peace for East Suffolk, and clerk of the peace for West Suffolk, their services as such clerks after the appointed day in the county of London, or in the administrative counties of East Sussex and West Sussex, or East Suffolk and West Suffolk, respectively, shall be deemed to be a continuous service with their service as clerks of the peace and clerks of petty sessional divisions in the counties of Middlesex, Surrey, and Kent respectively, and clerk of the peace for Sussex and Suffolk respectively.

This may be important in reckoning the duration of service for the purposes of s. 120, *post*.

(13.) All persons who at the appointed day hold office as county treasurer, county auditor, county solicitor, or county surveyor, or are officers (whether inspectors of weights and measures, public analysts, inspectors of petroleum or explosives, or other) of the quarter sessions or justices of the county, or of the assessment sessions in the metropolis, or any committee of such justices or any committee of visitors for lunatic asylums, or are servants under such sessions or justices and perform any duties in respect of the business

Sect. 118 (13). transferred by or in pursuance of this Act to the county council, shall become the officers and servants of the county council.

(14.) All persons who at the appointed day are officers and servants of the Metropolitan Board of Works shall become the officers and servants of the London County Council.

The Metropolitan Board of Works was superseded by the London County Council; see s. 40, sub-s. (8), *ante*, p. 90.

(15.) Every person who, on the appointed day, is the chief or other constable of the police force of any county, or is an officer or servant employed in connection with that force, shall, after the said day, be chief or other constable of the police force of the same county under the standing joint committee appointed in pursuance of this Act, or be an officer or servant of a county council appointing a portion of such joint committee, as the case may be.

This transfers the chief and other constables to the control of the standing joint committee under s. 30, *ante*, p. 66. See s. 119 (4), *post*.

(16.) Where any constable at the appointed day belongs to the police force of any borough the council of which will by virtue of this Act cease to maintain a separate police force, such constable shall, after the said day, become a constable of the county police force, and the provisions of this Act with respect to officers of any authority who become officers of the county council shall apply to such constable, with the substitution of the standing joint committee for the county council.

The boroughs which by virtue of this Act ceased to have a separate police force are the smaller boroughs under s. 39, *ante*, p. 86. See also s. 119, sub-s. (4), *post*.

As to officers transferred to county councils.

119.—(1.) The officers and servants of the quarter sessions or general asssessment sessions, or justices, or any committee of such sessions, or justices, or of any committee of visitors for lunatic asylums, or of the Metropolitan Board of Works, or other authority, who held office at the passing of this Act, and who by virtue of this Act become officers and servants of a county council (in this Act referred to as existing officers), shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not passed, and while performing the same duties, shall receive not less salaries or remuneration, and be entitled to not less pensions (if any), than they would have if this Act had not passed, and where any such officer can only be removed with the consent of a Secretary of State or the Local Government Board, such consent shall be part of the tenure of his office.

The officers and servants here referred to are those mentioned in s. 118.

(2.) The county council may distribute the business to be performed by existing officers in such manner as the council may think just, and every existing officer shall perform such duties in relation to that business as may be directed by the council. Sect. 119 (2)

This gives the county councils power to require officers to perform duties different from those they have previously had to perform.

(3.) The county council may abolish the office of any existing officer whose office they may deem unnecessary, but such officer shall be entitled to compensation under this Act.

As to compensation, see s. 120, *post*.

(4.) The provisions of this section shall apply to the chief and other constables of any police force, and to any officers employed in connection with such force, in like manner as if they were herein re-enacted with the substitution of the standing joint committee under this Act for the county council.

See s. 118, sub-ss. (15), (16), *ante*.

120.—(1.) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and Rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office. Compensation to existing officers.

This section is applied by s. 81 of the Local Government Act, 1894, to existing officers affected by that Act.

Regard is to be had to the following considerations in fixing the amount of compensation :

1. The loss must be a direct pecuniary loss.

2. The conditions of appointment must be considered, *e.g.*, whether the appointment is at pleasure, or for life, as in the case of a coroner. The fact that an office is held at pleasure does not *per se* disentitle the holder to compensation : *R.* v. *Norwich* (*Mayor, etc., of*), 8 A. & E. 633.

Sect. 120 (1).

NOTE.

3. The nature of the office or employment, *e.g.*, the office may be an important public office, or it may be that merely of a clerk.

4. The duration of his service. For this purpose his service under the quarter sessions, etc., and under the county, is to be deemed to be continuous; see s. 118, sub-s. (12), *ante*, p. 193.

5. Additional emoluments under or in consequence of the Act.

6. Emoluments which might have been acquired but for the refusal to accept an office under the Act.

7. The circumstances of the case.

The Civil Service scale is regulated by 22 Vict. c. 26, and 47 & 48 Vict. c. 57. It is, for a person who has served ten years or upwards, ten-sixtieths of his salary, and a further addition of one-sixtieth for every year's service over ten up to forty years.

In case of abolition of office a special allowance may be made by adding a number of years, not exceeding ten, to the number of years of actual service. See s. 7 of 22 Vict. c. 26. Under 47 & 48 Vict. c. 57, a number of years may be added to those of actual service in the case of an office which requires professional or other peculiar qualification. Reference should be made to the Treasury minutes relating to superannuation.

(2.) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.

5 & 6 Will. 4 c. 62.

It appears from this that a claimant is entitled to compensation though he may have been in office for a period less than five years.

(3.) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

(4.) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so what amount, ought to be granted to the claimant, and such determination shall be final.

The Treasury means the Commissioners of the Treasury. See s. 100, *ante*, p. 173.

(5.) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

Any member of the council may require the claimant to attend, but he cannot be examined on oath unless a justice is there to administer it. The chairman is, however, a justice *ex officio*; see s. 2, sub-s. (5), *ante*, p. 4. Once sworn, the claimant may be interrogated by any members.

(6.) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

It is difficult to suggest why this debt should be deemed to be a specialty debt or what advantage is derived from this provision. A specialty debt, like any other, is enforceable by action, and its only advantage over simple contract debts is that the statutory period of limitation is twenty years, as compared with six years.

A county council were held (by CHARLES and WRIGHT, JJ.) liable under this sub-section for payment of compensation awarded to the clerk to a school board, part of whose parish had been transferred to another parish by order under s. 57 of this Act, although the order provided that such compensation should be payable out of such fund as the county council might direct: WRIGHT, J., intimated that under s. 68 a special county rate might be levied on the parishes concerned for the amount required. See, however, sub-s. (8), *infra*; *West* v. *Wilts County Council*, 10 T. L. R. 19.

(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

This provision prevents an officer from obtaining compensation and then getting appointed to another office, thus drawing, as it were, two salaries.

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(8.) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes.

As to general county purposes, see s. 68, *ante*, p. 130.

Temporary Provision as to Grant from Exchequer.

Grant and application of part of probate duty and of horse and wheel tax during the year ending March 31st, 1889.

121.—(1.) In the financial year ending the thirty-first day of March, one thousand eight hundred and eighty-nine, the Commissioners of Inland Revenue shall from time to time, in such manner and under such regulations as the Treasury from time to time make, pay into the Bank of England to the Local Taxation Account—

(*a.*) Such sum as may be ascertained in manner provided by the said regulations to be four-fifth parts of one-third of the proceeds of the sums collected by them in the said year in respect of the probate duties, and for the purpose of this section, the expression "probate duties" means the stamp duties charged on the affidavit required from persons applying for probate or letters of administration in England, Wales, or Ireland, and on the inventory exhibited and recorded in Scotland, and the stamp duties charged on such accounts of personal and movable property as are specified in section thirty-eight of the Customs and Inland Revenue Act, 1881, and includes the proceeds of all penalties and forfeitures recovered in relation to such stamp duties; and

45 & 46 Vict. c. 12.

(*b.*) Such sum as may be ascertained in manner provided by the regulations to be the proceeds of the sums collected by them in the said year in respect of the duties on licences for trade carts, locomotives, horses, mules, and horse dealers under any Act of the present session.

(2.) The sums so paid shall be distributed by the Local Government Board as follows; that is to say,

(i.) In paying to every county, highway, and other local authority who have heretofore received out of moneys provided by Parliament a contribution to the costs of roads, or to the successors of such authority, sums calculated in like manner and according to the like scale and regulations as in the financial year ending on the thirty-first day of March, one thousand eight hundred and eighty-eight;

(ii.) If the amount received by the local taxation account from the duties on licences for trade carts, locomotives, horses, mules, and horse dealers under any Act of the present session exceeds the sum so payable to county and

highway or other local authorities, the excess shall be divided between the metropolis and quarter sessions boroughs, in proportion to their rateable value, as ascertained by the valuation lists, or where there is no valuation list by the last poor rate ;

(iii.) The share of the excess distributed to the metropolis shall be divided between the Commissioners of Sewers in the city of London and the vestries and district boards in the parishes in Schedule A. and the districts in Schedule B. in the Metropolis Management Act, 1855, as amended by subsequent Acts, according to rateable value as ascertained by the last valuation lists, and the share distributed to quarter sessions boroughs shall be paid to the councils of such boroughs ;

18 & 19 Vict. c. 120.

(iv.) If any payment is made under the foregoing provisions of this section respecting roads to the council of any quarter sessions borough, or to any authority for a highway area wholly or partly situate in such borough, or to the highway authority of any parish or district in the metropolis, the share of such quarter sessions borough, parish, or district in the distribution of the balance shall be reduced by the amount of the said payment, and, if less than that amount, shall not be paid, and any sum arising from such reduction or non-payment shall be added to the balance and distributed accordingly ;

(v.) Any sum payable in pursuance of this section to a county authority or the council of any borough, not being a highway authority, shall be paid to the county or borough fund as the case may be, but any other sum payable under the provisions of this section respecting roads, or respecting the division of the excess to any highway authority, commissioners of sewers, vestry, or district board, shall be applied in aid of the costs of the roads maintained by such authority, commissioners, vestry, or board ;

(vi.) Any balance remaining after the above payments shall be divided among the counties in England and Wales, in accordance with the provisions of this Act with respect to the division of the probate duty grant, and for the purpose of such division the metropolis shall be deemed to be a county, and the share assigned to each county on such division shall be applied towards paying to the guardians of each poor law union wholly or partly situate in the county such sum as is directed by this Act to be annually

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paid by the county council of such county to such guardians;

(vii.) Any balance remaining after the payment to the guardians of such union shall be paid to the county council of the county upon its coming into office, and, if there is any county borough in the county, the sum so paid shall be included in the adjustment under this Act between the councils of the county and borough.

(3.) Every local authority shall produce to the Local Government Board such evidence and comply with such rules as the Board may require or make for the purpose of effecting the distribution under this section.

(4.) A certificate of the Local Government Board of the sum due to any authority under this section may be varied by that Board, but unless so varied shall be final.

(5.) The Treasury may, from time to time during the financial year ending on the thirty-first day of March next after the passing of this Act, issue out of the Consolidated Fund or the growing produce thereof and pay to the Local Taxation Account such sums as appear to them to be required for the purpose of paying the highway authorities and county authorities such sums in respect of main roads as have been paid to them in previous years out of moneys provided by Parliament; and the sums so issued shall be treated as an advance, and shall be repaid to the Consolidated Fund out of the Local Taxation Account before any balance is distributed in manner provided by this section.

Savings.

Saving for existing securities and discharge of debts.

122.—(1.) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or of any property by this Act transferred to a county council; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to the county council under this Act shall be discharged, paid, and satisfied by such council.

(2.) Where for the purpose of satisfying any such security or any debt or liability, it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for the provisions of this Act, such rate may continue to be levied and power to be exercised either by the authority who otherwise would have levied or exercised the same or by the county council as the case may require.

(3.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred to any council by this Act to

liquidate so far as practicable before the appointed day all current debts and liabilities incurred by such authority. Sect. 122 (3).

123. All such bye-laws, orders, and regulations of the Privy Council, Secretary of State, Board of Trade, Local Government Board, or Government Department, or of any quarter sessions, council of a borough, the Metropolitan Board of Works, or other authority, whose powers and duties are transferred by or in pursuance of this Act to any county council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if they had been made by such council, subject, nevertheless, to revocation or alteration by such council in the manner in which bye-laws can be made by such council, and also to any exceptions or modifications which may be made at the time of the transfer. Saving for existing bye-laws.

124.—(1.) If at the date of the transfer in this section mentioned any action or proceeding, or any cause of action or proceeding, is pending or existing by or against any authority in relation to any powers, duties, liabilities, or property by this Act transferred to the county council, the same shall not be in anywise prejudicially affected by reason of the passing of this Act, but may be continued, prosecuted, and enforced by or against such council as successors of the said authority in like manner as if this Act had not been passed. Saving for pending actions, contracts, etc.

(2.) All contracts, deeds, bonds, agreements, and other instruments entered into or made and subsisting at the time of the transfer in this section mentioned, and affecting any such powers, duties, liabilities, or property of any authority as are by this Act transferred to a county council, shall be as of full force and effect against or in favour of the council, and may be enforced as fully and effectually as if, instead of the authority, the said council had been a party thereto.

For an illustration of the effect of this provision on existing contracts, see *Re Salop County Council*, 65 L. T. (N.S.) 416 ; 56 J. P. 213, the facts of which are set out in the note to s. 38 (1), *ante*, p. 83.

(3.) All contracts or agreements which, prior to the appointed day, have been made by the clerk of the peace or any justice or justices or otherwise on behalf of a county, or any division or part of a county, shall have effect as if the council of that county had been named therein instead of the clerk of the peace or such justice or justices, and may be enforced by or against the county council accordingly.

(4.) This section shall apply in the case of a committee of any authority in like manner as if the committee were such authority

Sect. 124 (4). and the committee of a county council were that council, and as if contracts and agreements by any such committee appointed by quarter sessions were contracts and agreements on behalf of a county.

Saving for charters, local Acts, etc.

125. Save so far as may be necessary to give effect to this Act or any scheme or order or other thing made or done thereunder, nothing in this Act shall prejudicially alter or affect the powers, rights, privileges, or immunities of any municipal corporation, or the operation of any municipal charter, local Act of Parliament, or order confirmed by Parliament, which immediately before the passing of this Act was in force.

For an illustration of the effect of this section in keeping alive the provisions of a local Act, notwithstanding the provisions of this Act, see *Re Staffordshire and Derbyshire County Councils*, 54 J. P. 566, cited *ante*, p. 105.

As to the power of a county council to amend local Acts by order, see s. 59 (6), *ante*, p. 117.

Repeals.

Repeal of Acts.

126. All enactments inconsistent with this Act are hereby repealed; Provided that—

(1.) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act:

(2.) This repeal shall not affect—

(*a.*) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; or

(*b.*) Any right, privilege, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed; or

(*c.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*d.*) Any power, investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such power, investigation, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.

See also ss. 11 and 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

SCHEDULES.

Schedule 1.

Section 20.

FIRST SCHEDULE.

Local Taxation Licences.

Licences for the sale of intoxicating liquor for consumption on the premises :

- Retailers of spirits (publicans).
- Retailers of spirits, occasional licences.
- Retailers of beer.
- Retailers of beer, occasional licences.
- Retailers of beer and wine.
- Retailers of cider.
- Retailers of wine.
- Retailers of wine, occasional licences.
- Retailers of sweets.

Licences for the sale of intoxicating liquor by retail, by persons not licensed to deal therein, for consumption off the premises :

- Retailers of beer.
- Retailers of beer and wine.
- Retailers of cider.
- Retailers of wine.
- Retailers of sweets.
- Retailers of table beer.

Licences to deal in game.

Licences for

- Beer dealers.
- Spirit dealers.
- Sweets dealers.
- Wine dealers.
- Refreshment house keepers.
- Dogs.
- Killing game.
- Guns.
- Appraisers.
- Auctioneers.
- Tobacco dealers.
- Carriages.
- Trade carts.
- Locomotives.
- Horses and mules.
- Horse dealers.
- Armorial bearings.
- Male servants.
- Hawkers.
- House agents.
- Pawnbrokers.
- Plate dealers.

NOTE.—These are the licences the duties payable on which are transferred to the county council under s. 20, *ante*, p. 46. As to the duties on trade carts, locomotives, horses and mules, and horse dealers, see the note to s. 34 (1) (*d*), *ante*, p. 74.

To the list of licences above-mentioned must now be added those for light locomotives under the Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 8, *post*.

Schedule 2

Section 71.

SECOND SCHEDULE.

Alteration of Schedule to District Auditors Act, 1879.
(42 & 43 *Vict. c.* 6).

The following scale shall, unless otherwise determined by Parliament, be substituted for so much of the scale set forth in the First Schedule to the District Auditors Act, 1879, as relates to expenditure amounting to 100,000*l.* and upwards :—

Where the total of the expenditure comprised in the financial statement is	The sum shall be
100,000*l.* and under 150,000*l.*	50*l.*
150,000*l.* and under 200,000*l.*	60*l.*
200,000*l.* and upwards	15*l.* in addition for every 50,000*l.*, or part thereof.

NOTE.—The District Auditors Act, 1879, s. 2, provides as follows :—

"After the twenty-fifth day of March, one thousand eight hundred and seventy-nine, all payments to district auditors out of any local rate shall cease, and the whole of the salaries or remuneration and of the expenses of district auditors, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament; and for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty for the use of Her Majesty, according to the scale contained in the First Schedule to this Act, and such duty shall be levied by a stamp on the certificate of the auditor hereinafter mentioned."

The First Schedule to the Act is as follows :—

Scale of Stamp Duties payable by Local Authorities.

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under 20*l.*	5*s.*
20*l.* and under 50*l.*	10*s.*
50*l.* and under 100*l.*	1*l.*
100*l.* and under 500*l.*	2*l.*
500*l.* and under 1,000*l.*	3*l.*
1,000*l.* and under 2,500*l.*	4*l.*
2,500*l.* and under 5,000*l.*	5*l.*
5,000*l.* and under 10,000*l.*	10*l.*
10,000*l.* and under 20,000*l.*	15*l.*
20,000*l.* and under 50,000*l.*	20*l.*
50,000*l.* and under 100,000*l.*	30*l.*
100,000*l.* and upwards	50*l.*

"For the purpose of this schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept." **Schedule 2.** NOTE.

Section 71 (3), *ante*, p. 137, modifies the above schedule to the extent mentioned in the text.

THIRD SCHEDULE.

Sections 31, 34, 35, 36, 69.

County Boroughs.

Name of Borough.	Name of County in which, for the purpose of this Act, the Borough is deemed to be situate.
Barrow	Lancaster.
Bath	Somerset.
Birkenhead	Chester.
Birmingham	Warwick.
Blackburn	Lancaster.
Bolton	Lancaster.
Bootle-cum-Linacre	Lancaster.
Bradford	York, West Riding.
Brighton	Sussex.
Bristol	Gloucester and Somerset.
Burnley	Lancaster.
Bury	Lancaster.
Canterbury	Kent.
Cardiff	Glamorgan.
Chester	Chester.
Coventry	Warwick.
Croydon	Surrey.
Derby	Derby.
Devonport	Devon.
Dudley	Worcester.
Exeter	Devon.
Gateshead	Durham.
Gloucester	Gloucester.
Great Yarmouth	Norfolk and Suffolk.
Halifax	York, West Riding.
Hanley	Stafford.
Hastings	Sussex.
Huddersfield	York, West Riding.
Ipswich	Suffolk.
Kingston-upon-Hull	York, East Riding.
Leeds	York, West Riding.
Leicester	Leicester.
Lincoln	Lincoln (parts of Lindsey).
Liverpool	Lancaster.
Manchester	Lancaster.
Middlesborough	York, North Riding.
Newcastle-upon-Tyne	Northumberland.
Northampton	Northampton.
Norwich	Norfolk.
Nottingham	Nottingham.
Oldham	Lancaster.
Plymouth	Devon.
Portsmouth	Hants.
Preston	Lancaster.
Reading	Berks.
Rochdale	Lancaster.
Saint Helen's	Lancaster.

Schedule 3.

Name of Borough.	Name of County in which for the purpose of this Act, the Borough is deemed to be situate.
Salford	Lancaster.
Sheffield	York, West Riding.
Southampton	Hants.
South Shields	Durham.
Stockport	Chester and Lancaster.
Sunderland	Durham.
Swansea	Glamorgan.
Walsall	Stafford.
West Bromwich	Stafford.
West Ham	Essex.
Wigan	Lancaster.
Wolverhampton	Stafford.
Worcester	Worcester.
York	York, North, East, and West Ridings

NOTE.—The provisions of the Act relating to county boroughs are contained in ss. 31—34, *ante*, p. 67.

In addition to the boroughs above-mentioned the following have been created county boroughs under s. 54 (1) (*d*), *ante*, viz., Grimsby, Oxford, and Newport (Mon.).

PART II.

Statutes Incorporated with the Local Government Act, 1888.

THE BALLOT ACT, 1872 (35 & 36 Vict. Cap. 33.)

An Act to amend the Law relating to Procedure at Parliamentary and Municipal Elections. [18th July 1872.]

Whereas it is expedient to amend the law relating to procedure at parliamentary and municipal elections : Be it enacted, etc. :

This Act is applied to municipal elections, and therefore to elections of county councillors, by the Municipal Corporations Act, 1882, s. 58, and Sched. 3, Part III., *post.* See also the provisions of the Act itself as to its application to municipal elections.

Only those portions of the Act which apply to elections of county councillors are set out in the following pages.

PART I.—Parliamentary Elections.

Procedure at Elections.

1. * * * * * Nomination of candidates for parliamentary elections.

If after the adjournment of an election by the returning officer for the purpose of taking a poll one of the candidates nominated shall die before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death ; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.

The earlier part of this section applies only to parliamentary elections, but it was held in a recent case that the paragraph above set out is applied to a county council election by s. 58 of the Municipal Corporations Act, 1882, *post*, and the court by *mandamus* ordered a returning officer to countermand the poll, a candidate having died after nomination : *Westacott* v. *Stewart*, 14 T. L. R. 261 : W. N. 1898, p. 23. The court afterwards granted a *mandamus* to hold the election on a specified day under s. 70 of the Municipal Corporations Act, 1882, *post.* Times, March 4th, 1898.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer Poll at elections.

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presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

Where any equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer.

It must be borne in mind that it is no part of the duty of the returning officer to determine questions as to the qualification or disqualification of a candidate; that is a matter to be decided on an election petition. The returning officer must count the valid papers and "forthwith" declare the candidate or candidates receiving the majority of votes to be elected. *Pritchard* v. *Bangor* (*Mayor of*), 13 App. Cas. 241; 57 L. J. Q. B. 313; 58 L. T. (N.S.) 502; 37 W. R. 103; 52 J. P. 564.

At an election of county councillors no return is made to the Clerk of the Crown in Chancery. See Municipal Corporations Act, 1882, Sched. 3, Part III. (6), *post*.

As to the return to be made to the county returning officer by the returning officer for an electoral division wholly within a borough, see the County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 3, *post*.

The concluding paragraph of this section does not apply to elections of county councillors. See the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 1, *post*.

Provision is, however, made for a casting vote being given by the returning officer at a municipal election by s. 58 (5) of that Act, *post*.

As to the validity of votes irregularly marked, etc., see the note to r. 36 in the schedule, *post*.

Offences at Elections.

Offences in respect of nomination papers, ballot papers and ballot boxes.

3. Every person who,—

(1.) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or

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(2.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper ; or

(3.) Without due authority supplies any ballot paper to any person ; or

(4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in ; or

(5.) Fraudulently takes out of the polling station any ballot paper ; or

(6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election ;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Sub-section (1) does not apply to an election of county councillors ; the Municipal Corporations Act, 1882, s. 74, *post*, contains the corresponding provision applicable to such an election.

Infringement of secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whomsoever, shall interfere with or attempt to interfere with a voter, when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as

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to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Every officer, etc., is required by Sched. 1, r. 54, *post*, to make a declaration of secrecy in the form contained in Sched. 2.

An information was laid against the respondent under the above section, charging that he, being a personating agent duly appointed and in attendance at a certain polling station in connection with a municipal election, did not then and there maintain the secrecy of the voting in such station, but did then and there communicate before the poll was closed to a certain person or persons certain information as to the names and numbers on the register of voters of certain electors who had and had not applied for ballot papers or voted at that election. It appeared that the respondent having been appointed personating agent, as stated in the information, attended at the polling booth with a copy of the burgess-roll, and remained there some hours, placing a mark against the name of each voter who obtained a ballot paper, and then before the close of the poll left the station, taking with him his copy of the burgess-roll, which he left in the committee room of the candidate by whom he was employed. There was no proof that the copy of the burgess-roll was seen by any person while in the room. *Held*, that there was not sufficient evidence to warrant a conviction under the above section, as there was no proof that the information as to the voters was actually communicated to any person, and it was not enough that the means of acquiring such information were afforded to any one. *Stannanought* v. *Hazeldine*, 4 C. P. D. 191 ; 48 L. J. M. C. 89 ; 40 L. T. (N.S.) 589 ; 27 W. R. 620 ; 43 J. P. 352.

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Use of school and public room for poll.

6. The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house. Sect. 6.

This section does not apply to municipal elections. See the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 1, *post*. It does, however, apply to elections of county councillors, and the schools and rooms above mentioned may be used at such elections for the purpose of taking the poll and hearing objections to nomination papers, and counting votes. See the Local Government Act, 1888, s. 75, sub-s. (16) (*g*), *ante*, p. 146.

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Duties of Returning and Election Officers.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act. General powers and duties of returning officer.

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It is the duty of the returning officer at an election of county councillors to provide polling stations, etc., under this section. See the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 3, *post*. As to the providing of nomination papers, see the same Act, Sched. 3, Part II. r. 6.

As to the liability of a returning officer for mistakes in the printing of the names on the ballot papers, see *Wilson* v. *Ingham*, noted under s. 13, *infra*.

The remainder of this section is not applicable to elections of county councillors.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near the station, or any other person authorized in writing by the returning officer to remove him ; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day. Keeping of order in station.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

A candidate has a general right to be present in a polling station, and he cannot be excluded under this section, though he has not undertaken the duties of an agent, unless he misconducts himself. *Clementson* v. *Mason*, L. R. 10 C. P. 209 ; 44 L. J. C. P. 171 ; 32 L. T. (N.S.) 325 ; 39 J. P. 360.

Sect. 10.

Powers of presiding officer and administration of oaths, etc.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorized by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorized by this Act to be taken before him.

As to the adjournment of the poll it is provided by the 5 & 6 Will. 4, c. 36, s. 8, that when the proceedings at an election are interrupted or obstructed by any riot or open violence the lawful deputy of any returning officer shall not finally close the poll but shall adjourn the taking the poll at the particular polling place or places at which such interruption or obstruction shall have happened until the following day, etc.

As to the questions which may be put to voters, see the Municipal Corporations Act, 1882, s. 59, *post*.

As to the declaration of secrecy, see Sched. 1, r. 54, *post*.

Liability of officers for misconduct.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance, or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds,

30 & 31 Vict c. 102.

Section 50 of the Representation of the People Act, 1867 (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate), shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk.

This Act imposes a duty on the presiding officer at a polling station during an election to deliver to the voters voting papers bearing the official mark appointed under the Act for the election, and to be present during such election at the polling station, so that the voters, before depositing their voting papers in the ballot box, can show to him the official mark on the back of such papers, in accordance with the statute. For breach of these duties, being merely ministerial, an action will lie by a party aggrieved, *e.g.*, who has thereby lost the election through votes given to him being void for the official mark without malice or want of reasonable care on the part of the defendant. If a clerk be appointed by the returning officer to assist at the polling station, the presiding officer may, by the Act, depute to such clerk so much of his duties as he thinks fit, with certain specified exceptions. For the Acts of commission or omission of the clerk in the performance of the duties so delegated, the presiding officer will not be responsible, inasmuch as he does not appoint the clerk, and the relation of master and servant does not exist between them. *Per* BOVILL, C.J., and GROVE, J. :—The Act does not impose on the presiding officer the duty of ascertaining, before the voter deposits a voting paper in the ballot box, whether the official mark is on such paper. *Per* KEATING and BRETT, JJ. :—The statute does impose such duty on the presiding officer.

Pickering v. *James*, L. R. 8 C. P. 489 ; 42 L. J. C. P. 217 ; 29 L. T. (N.S.) 211 ; 21 W. R. 786 ; 37 J. P. 679. Sect. 11.

NOTE.

The view taken by the last-mentioned judges was followed by Lord COLERIDGE, C.J., HAWKINS and MATHEW, JJ., in *Ackers* v. *Howard*, 16 Q. B. D. 739 ; 55 L. J. Q. B. 273 ; 54 L. T. (N.S.) 651 ; 54 W. R. 609 ; 50 J. P. 519.

The 30 & 31 Vict. c. 102, s. 50, provides that no returning officer nor his deputy, nor any partner or clerk of either of them, shall act as agent for any candidate in the management and conduct of his election . . . . and if he so act he shall be guilty of a misdemeanor.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted. Prohibition of disclosure of vote.

A similar provision is contained in the Municipal Corporations Act, 1882, s. 104, *ante*.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election. Non-compliance with rules.

At a municipal election for three councillors six burgesses were nominated and one of them twice. In the ballot paper the name of each burgess nominated was printed, and that of the petitioner, who was twice nominated, was twice printed, his description as given by the nominators somewhat differing, so that there appeared to be seven candidates on the ballot paper in which the petitioner's name appeared, as No. 5 and No. 6, and there was nothing to indicate on the ballot paper that Nos. 5 and 6 were the same person but the similarity of the name. Of the voters who voted for petitioner some put their crosses against both names, Nos. 5 and 6. By adding the numbers together, after rejecting the eight who put their crosses to both Nos. 5 and 6, the petitioner had a majority over the respondent *Pulsford*, who was declared to be elected. *Held*, that although the ballot paper was wrong in form, as the petitioner's name ought not to have appeared twice in it, the mistake did not affect the result of the election, and was therefore cured by s. 13 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), and that the votes against the petitioner's names, Nos. 5 and 6, might be counted together, there being nothing to prevent it but the irregular form of the ballot paper. *Northcote* v. *Pulsford*, L. R. 10 C. P. 476 ; 44 L. J. C. P. 217 ; 32 L. T. (N.S.) 102 ; 23 W. R. 700 ; 39 J. P. 487.

But where a ballot paper contained by mistake the name of a candidate who had withdrawn and a number of votes were given for that candidate which might have affected the result, the election was declared void ; and the court held that under such circumstances the returning officer might be liable to pay the costs of the election petition. *Wilson* v. *Ingham*, 64 L. J. Q. B. 775 ; 72 L. T. (N.S.) 796 ; 43 W. R. 621 ; 59 J. P. 614.

And see generally as to the effect of this section, *Woodward* v. *Sarsons*, L. R. 10 C. P. 733 ; 44 L. J. C. P. 293 ; 32 L. T. (N.S.) 867 ; 39 J. P. 776, and the other cases cited in the notes to r. 36 of Sched. 1, *post*.

Sect. 14.

Use of municipal ballot boxes, etc., for parliamentary election and *vice versâ*.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

This section is applied to elections of county councillors by s. 75 (19) of the Local Government Act, 1888, incorporating 38 & 39 Vict. c. 84, s. 6, *post*. It is there provided that in any case to which s. 14 of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the court, upon taxation of his accounts, shall have regard to this provision.

Construction of Act.

15. This part of this Act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall, for the purposes of the said enactments, be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth," as used in the said enactments, shall be deemed to include a polling station; and the term "proclamation," as used in the said enactments, shall be deemed to include a public notice given in pursuance of this Act.

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PART III.

Personation.

Definition and punishment of personation.

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections:—

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the

Sect. 24

offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

* * * * *

It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the Third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.

* * * * *

As to personation at municipal elections and at elections of county councillors, see the Municipal Elections (Corrupt Practices) Act, 1884, s. 2, and Sched. 3, Part I., *post*.

The punishment for personation is now prescribed by the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6, which is applied to municipal elections by the Act of 1884, s. 2, above referred to.

If a man applies for a ballot paper in a name which is not his own name but is the name under which he is registered and which was intended to designate him and no other person, he does not commit the offence of personation. *R.* v. *Fox*, 16 Cox C. C. 166. Nor does a man who applies for a ballot paper honestly believing that he is entitled to vote. *Gloucester Election Petition*, 2 O'M. & H. 62; *Athlone Election Petition*, 3 O'M. & H. 57; *Isaacson* v. *Durant*, 54 L. T. (N.S.) 684; 4 O'M. & H. 34.

"Procuring" is complete if the person procured actually applies for a ballot paper though he never gets it, and "counselling" is complete though the person counselled never even applies for a ballot paper. *R.* v. *Hayne*, 9 Cox C. C. 412; *S.C. sub. nom. Hayne* v. *Brown*, 22 J. P. 231.

It is not necessary to allege in an indictment under this section or to prove at the trial that the presiding officer at the polling station where the offence was committed was duly appointed. *R.* v. *Garvey*, 16 Cox C. C. 252.

The duty of the returning officer to prosecute is not one which the court can enforce by *mandamus*. *R.* v. *Preston* (*Mayor, etc. of*). 46 J. P. 324.

The provisions of the Registration Acts above referred to are the 6 & 7 Vict. c. 18, ss. 85—89. They are also referred to in the Municipal Corporations Act, 1882, s. 86, *post*, and they are as follows:—

"85. It shall be lawful for any candidate, at any election of a member or members to serve in Parliament for any county, city, or borough, previous to

Sect. 24.

NOTE.

the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation ; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agent for such purpose ; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

"86. If at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing : Provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this Act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him ; but the said returning officer, or his deputy, shall cause the words, 'protested against for personation,' to be placed against the vote of the person so charged with personation when entered in the poll book.

"87. Every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid : Provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorized and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge ; and if no such justice shall be found within four hours after the closing of the said poll then such person shall forthwith be discharged from custody : Provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

"88. If on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective

recognizances to appear and give evidence on such trial as in the case of other misdemeanors. Sect. 24.

"89. If the said justices shall, on the hearing of the said charge, be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices, and they are hereby required, to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of ten pounds nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of Her Majesty's Superior Courts of Record at Westminster: Provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension." NOTE.

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PART IV.

MISCELLANEOUS.

28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act. Effect of schedules.

29. In this Act—

The expression "municipal borough" means any place for the time being subject to the Municipal Corporation Acts, or any of them: Definitions. "Municipal borough."

The expression "Municipal Corporation Acts" means— "Municipal Corporation Acts."

(*a.*) As regards England, the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales," and the Acts amending the same:

* * * * *

Sect. 29.

"Municipal election."

The expression "municipal election" means—

(*a.*) As regards England, an election of any person to serve the office of councillor, auditor, or assessor of any municipal borough, or of councillor for a ward of a municipal borough; and

* * * * *

Those portions of the above section which relate to Scotland and Ireland only have been omitted.

The reference to the 5 & 6 Will. 4, c. 76, must be read as a reference to the Municipal Corporations Act, 1882; see s. 242 of the latter Act, *post.*

The expression "municipal election," as used in this Act, includes the election of a county councillor.

Application of Act.

30. This Act shall apply to any parliamentary or municipal election which may be held after the passing thereof.

* * * * *

Short title.

33. This Act may be cited as the Ballot Act, 1872, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine; and on the said day the Acts in the fourth, fifth, and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this Act, but such proceeding shall be carried on as if this Act had continued in force.

The Ballot Act is continued in force from year to year, and is now in force by virtue of the Expiring Laws Continuance Act, 1897.

SCHEDULES.

FIRST SCHEDULE.

Part I.

Rules for Parliamentary Elections.

The Poll.

* * * * *

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.

At an election of county councillors this duty will devolve on the returning officer. See the Local Government Act, 1888, s. 75, sub-s. (4), *ante*, and the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 3, *post.*

Rule 16 does not apply to municipal elections or elections of county councillors. See the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 1, *ante.*

* * * * *

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

Schedule 1.

RULE 18.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

As to the duty of the returning officer to give notice of the description of persons entitled to vote at each polling station, see the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 2.

Rule 19 does not apply to municipal elections or to elections of county councillors. See the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 1, *post*.

* * * * *

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

As to the duty of the returning officer at an election of county councillors to provide the things mentioned in the above rule, see the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 1, *ante*.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

The candidates cannot be excluded. See *Clementson* v. *Mason*, cited in the note to s. 9, *ante*.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

See the form in the Second Schedule, *post*.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

A ballot paper not marked with the official mark is void. See r. 36, *post*, and the notes thereto.

It is the duty of the presiding officer to see that the official mark is put on the paper. See *Pickering* v. *James*, and *Ackers* v. *Howard*, *ante*, p. 213.

Schedule 1.

RULE 25.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

The form of declaration of inability to read is contained in the Second Schedule, *post*.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets, sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

(1) each ballot box in use at his station, unopened but with the key attached; and

(2) the unused and spoilt ballot papers, placed together ; and
(3) the tendered ballot papers ; and
(4) the marked copies of the register of voters, and the counterfoils of the ballot papers ; and
(5) the tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read ;

and shall deliver such packets to the returning officer.

It would appear that the marked copies of the register and the counterfoils should be sealed up separately. See *per* BRETT, J., in *Stowe* v. *Jolliffe*, L. R. 9 C. P. 446 ; 43 L. J. C. P. 173 ; 30 L. T. (N.S.) 299 ; 22 W. R. 946 ; 38 J. P. 617.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

As to the appointment of agents at a municipal election or an election of county councillors, see the Municipal Corporations Act, 1882, s. 58 (6) *ante*.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

The non-attendance of the agents will not invalidate the counting ; see r. 55, *post*.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

The candidates are entitled to be present. See *Clementson* v. *Mason*, cited in the note to s. 9, *ante*, p. 211.

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers, and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal, and the seals of such

Schedule 1. of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

RULE 35.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the number of ballot papers rejected and not counted by him under the several heads of—

(1.) Want of official mark ;

(2.) Voting for more candidates than entitled to ;

(3.) Writing or mark by which voter could be identified ;

(4.) Unmarked or void for uncertainty ;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.

The decision of the returning officer as to any question arising in respect of any ballot paper is final, subject to reversal on petition questioning the election on return. See s. 2, *ante*.

To render an election void under the Ballot Act by reason of a non-observance of, or non-compliance with, the rules or forms given therein, such non-observance or non-compliance must be so great as to satisfy the tribunal before which the validity of the election is contested that the election has been conducted in a manner contrary to the principle of an election by ballot, and that the irregularities complained of did affect or might have affected the result of the election. The ballot paper must not be marked so as to show that the voter intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all, or for which candidate he intended to vote, nor so as to make it possible by seeing the paper itself or by reference to other available facts to identify the way in which he has voted. If these requirements are not substantially fulfilled the ballot paper is void, and should not be counted, and if it is counted it should be struck out on a scrutiny. Ballot papers with the name of the voter or of the candidate voted for written opposite to the name of the latter and not marked with a cross, or with the addition of a "*cw*" to the cross, were held to be void. But the placing of two crosses or three crosses, or a single stroke in lieu of a cross, or a straight line, or a mark like an imperfect letter P in addition to the cross, or a star instead of a cross, or a cross blurred or marked with a tremulous hand, or a cross placed on the left-hand side of the ballot paper, or a pencil line drawn through the name of the candidate not voted for, or a ballot paper torn longitudinally through the centre, were held not to avoid the vote in the absence of evidence of connivance or pre-arrangement. Twenty ballot papers were marked by the presiding officer by the direction of voters who were unable to read. Each of these ballot papers was placed by the presiding officer in the ballot box wrapped up in the declaration of inability to read made by the voter. The declarations of inability to read of the votes so marked by the presiding officer were not made up into a separate packet and sealed as required by rr. 26, 29, *ante*, but were delivered to the returning officer in the ballot box with the ballot papers as above mentioned. These votes could have been, but were not, in fact, identified by the returning officer at the counting of the votes. It was held that, notwithstanding this breach by the presiding officer of the directions in the rules, the votes in question were properly counted. At one of the polling stations the presiding officer before delivering the ballot papers to the electors attending to vote, marked upon each (to the extent of 294) the number of the voter appearing on the burgess roll, which would enable any of the persons present to identify the way in which the party had voted. Of the electors who received these ballot papers, 234 voted for the petitioner and 60 for the respondent. These votes were not counted by the returning officer. It was held that this admitted error of the presiding officer which did not affect the result, did not render the election void either at common law or under the Ballot Act. Where there have been irregularities in the conduct of an election by the presiding officer at a particular polling station, but there has been no personal default on the part of the returning officer, and the result of the election has not been affected by the mistake of the presiding officer, the returning officer will not be visited with costs. *Woodward* v. *Sarsons*, L. R. 10 C. P. 733 ; 44 L. J. C. P. 293 ; 32 L. T. (N.S.) 867 ; 39 J. P. 776.

In another case, where the presiding officer marked the number of the elector n the register of electors on about one-third of the total number of ballot

papers issued, as well as on the counterfoils, but the result of the election was not affected by the irregularity, it was held that the election was not void under the statute nor at common law. *Deans* v. *Haddington Magistrates*, 9 Ct. of Sess. Cas. 1077.

In the *Wigtown Election Petition* (Ct. of Sess. Cas. 4th series, vol. i. p. 925, 2 O'M. & H. 215), it was held (1) that it is essential to a valid vote that the ballot paper be marked with a cross, and not a mere line (see, however, *The Cirencester case*, *post*, as to this), but that a badly formed cross, or a cross with the addition of small strokes so as to resemble the letter X, will not render the vote null; (2) (diss. Lord BENHOLME), that a ballot paper with a cross decidedly to the left of the candidate's name must be rejected; (3) that any mark on the back of the ballot paper, other than the printed number, renders the vote null; (4) (diss. Lord BENHOLME), that any substantive and separate mark on the face of the ballot paper in addition to the cross, such as a superfluous cross, will render the vote null; (5) that it is not essential that the cross be made with the pencil provided in the compartment, but that it may be made with any pencil or any ink not peculiar.

Where the cross was partly in the space opposite one candidate's name and partly in that opposite another's, the vote was held good for the candidate opposite whose name the two limbs of the cross intersected. *M'Laren* v. *Milne Home*, 7 Q. B. D. 477. In the same case it was held that though the mark did not discolour the ballot paper, it might be well marked, as if done by a thumb-nail or blunt instrument.

A ballot paper which conforms in other respects to the requirements of the Act is not void because it has not on its face the official mark directed by s. 2 to be marked on both sides. *Ackers* v. *Howard*, 16 Q. B. D. 739; 55 L. J. Q. B. 273; 54 L. T. (N.S.) 651; 54 W. R. 609; 50 J. P. 519.

A ballot paper ought not to be rejected because the voter's mark, placed on the right-hand side, after the candidate's name, is placed on the left of the vertical line delineated on the ballot paper. *Sheil* v. *Ennis*, 8 Ir. R. C. L. 240; 2 O'M. & H. 186.

Schedule 2 of this Act, *post*, p. 231, which applies to municipal elections, directs that a voter shall vote by placing a cross on the right-hand side of the ballot paper opposite the name of each candidate for whom he votes. A general order of the Education Department, made under the Elementary Education Acts, provided that the poll at elections of school boards in boroughs shall be conducted in like manner as the poll at a contested municipal election is directed by the Ballot Act, 1872, to be conducted, and the provisions of that Act shall, subject to the provisions of this Order, apply to the elections of school boards, provided that "every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected, and may give all such votes to one candidate, or may distribute among the candidates as he thinks fit. The voter may place against the name of any candidate for whom he votes the number of votes he gives to such candidate in lieu of a cross, and the form of directions for the guidance of the voter in voting contained in the Ballot Act, 1872, shall be altered accordingly:" *Held*, applying the principle of *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; 44 L. J. C. P. 293, that the provisions of the general order, and of the Ballot Act, 1872, were sufficiently complied with where ballot papers at the election of a school board in a borough were marked otherwise than in the mode prescribed by the order if it could be ascertained with reasonable certainty for whom the voter in each case intended to vote, and how many votes he intended to give, and if it appeared that he had not intended to give a greater number of votes than there were members of the school board to be elected. Applying the above principles the court held that ballot papers marked by placing crosses instead of figures, or crosses and figures, or single strokes, opposite the names of candidates, were valid. *Phillips* v. *Goff*, 17 Q. B. D. 805; 55 L. J. Q. B. 512; 35 W. R. 197; 50 J. P. 614; and see *Morris* v. *Beves*, [1897] 1 Q. B. 449; 66 L. J. Q. B. 299; 76 L. T. (N.S.) 120; 45 W. R. 430; 61 J. P. 263.

Where the cross was put, not opposite to any of the candidates' names, but at the top of the paper or in the right-hand top corner, just above the line, it was held that the vote was void for uncertainty: *The Stepney case*, 4 O'M. & H. 37; *The Buckrose Division case*, *ib.* 111.

In the latter case, again, a paper with a cross on the back which could be seen through the paper, and appeared there opposite a candidate's name, was rejected, the court holding that the mark must be on the face of the paper. Where there was a mark on the face and another on the back, the vote given by the mark on the face was allowed. A paper with a cross on the left-hand side of one candidate's name, and a straight line on the right-hand side of another candidate's name, was held void for uncertainty.

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A mark like a circle instead of a cross has been held good in *The Buckrose Division case*, 4 O'M. & H. 112, and bad in *The Stepney case*, *ib.* 37. Probably the former is the better view.

In *The Buckrose Division case*, again, a paper in which a cross was made immediately *upon* a candidate's name was rejected, apparently upon the ground that it was possible that the voter intended to strike the name out (4 O'M. & H. 112).

In *The Cirencester case* (1893), 4 O'M & H. 194, HAWKINS, J., in delivering the judgment of the court (HAWKINS and VAUGHAN WILLIAMS, JJ.), said: "A good many objections were raised to the ballot papers before us upon which votes were recorded on the ground that although the official mark was stamped upon the inside or face, there was no official mark upon the outside or back of the papers. Upon the backs of several of the papers no trace of an official mark was discernible; these were clearly void according to the express provisions of s. 2 of the statute. In several of the remaining papers (all of which had the official mark stamped with ink upon the face), the stamp so marked on the face had been so imprinted thereon with the official stamp that the ink had been forced through the paper, and had left a distinct mark upon the back sufficient to indicate that it had been caused by the application of the stamp to the front. Nobody acquainted with the official stamp could doubt this. Although such mark was not all that could be desired, it seemed to us to be sufficient; but for the act of the presiding officer the mark could not have been there, and, viewed from the back only, the presiding officer could not fail to recognize it as a ballot paper which had been given out by him to a voter, and thus the object of the statute in requiring the paper to be marked on the back was fulfilled. It will be observed that the statute does not require that the stamp shall be applied to the back; it merely requires that the back shall bear the official mark. In several others of the ballot papers, the official stamp itself had, beyond doubt, been applied to the back, but there seems to have been a deficiency of ink upon the stamp, and the impression was not by any means so clear as it would have been if greater care had been taken by the stamper. It was obvious, however, to us, and would be equally obvious to the presiding officer; and we think it is not necessary that there should be in every respect a clear and distinct impression of every part of the stamp, but that it is quite sufficient if the evidence afforded by that which appears on the back of the paper leads us to the conclusion that the stamp was applied there with the intention of making the required mark; and we cannot help remembering that which we constantly see—official stamps upon law proceedings imperfectly impressed, and yet not open to objection nor even questioned. We think, therefore, that all the objections to the ballot papers upon the ground that the official marks were defectively marked upon the backs of them fail, and that it is quite sufficient if there is such evidence of the official mark, whether it is perforated through the paper, whether the ink is caused to run through the paper so as to indicate the official mark, or whether the stamp is applied but fails to make a perfect mark; in all such cases, if there be evidence that the presiding officer has intended to make, and has in fact made, what, fairly looked at, indicates that a recognizable official mark is upon the back of the ballot paper, votes marked on such papers ought to be held good votes in the absence of any other substantial objection."

In dealing with ballot papers alleged to be improperly marked by the voters, HAWKINS, J., continued: "With regard to those votes as to which objections have been raised to the mode in which they were marked by the voters, we have proceeded upon what we think was the true intention of the legislature in framing the Act of Parliament. We have, first of all, asked ourselves whether the voter received his paper with the intention to vote. The mere fact that he has applied for and received a voting paper affords abundant evidence that such was his intention. Then we have looked at the face of the paper itself with a view to see whether or not the voter has by any mark clearly indicated the person for whom he wished and intended to vote; and if we have found such a mark we have upheld the vote, regardless of the very technical, and, as we think, unsubstantial objections which have been allowed in some of the earlier cases to be found in the reports of election cases, our view being that we ought to interpret the Ballot Act liberally, and, subject to other objections, to give effect to any mark on the face of the paper which, in our opinion, clearly indicated the intention of the voter, whether such mark was in the shape of a cross, or a straight line, or in any other form, and whether made with pen and ink, pencil, or even an indentation made on the paper, and whether on the right or the left hand of the candidate's name or elsewhere within his compartment on the voting paper. Of course, every deviation from the course pointed out in the rules tends to create difficulties which may be avoided by a rigid observance of it. It is highly prudent, therefore, to adhere to it, though we do not think it essential.

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"There are some marks, however, which undoubtedly gave us much trouble to discover what was the real meaning of them. Upon each one we have come to the best conclusion we could with the materials before us. There were some marks and blotches of a very irregular character which might be well mistaken as indications of temporary unsteadiness in the voters, who by their unsteadiness imperilled their votes. In such cases we have done our best to discover whether although obscured by the blots, blurs, and other marks, there existed positive indications on the part of the voter of an intention to vote, without a thought of leaving behind a trace to enable him to be identified. We have not been astute to give way to objections of an unsubstantial character, but we have endeavoured to interpret the language of the statute in the liberal spirit in which it is conceived, and to carry out the intentions of the legislature in the spirit in which the enactments were passed, supporting every vote which we have found to be clearly indicated, except in a few cases in which the language of the Act expressly declared them void.

"There is a class of cases in which it was said that doubt was apparent on the paper for which candidate the voter intended to give his vote. Of course, if it is on the face of the ballot paper left in doubt whether the man intended to vote for one candidate or the other, the weight of the objection that the vote is uncertain is obvious, for the simple reason that one candidate has just as much right to claim the vote as the other, and so it ought not to be counted for either, and the statute so enacts."

In the same case, the court was called upon to decide as to the validity of ballot papers containing marks, which, it was asserted, might lead to the identification of the voters. On this point, HAWKINS, J., said: "That would be a serious objection if it were maintained—indeed the statute enacts that it shall render the vote void. It was argued before us that if the marks were such as *might* lead to the indentification of the voter that would be quite sufficient to vitiate and render void the vote. That is not our opinion. It is not a question whether by some accident or other a challenged mark *might* possibly lead to the identification of the voter. If that were so, it would be necessary to fix some simple, well-defined cross, or other mark by which alone every ballot paper should be marked to indicate the vote; but this would render strict compliance with the requirement of the law extremely difficult and practically impossible. Very few persons, none with unsteady hands, would be capable of making a definite mark with strict accuracy, and yet any deviation from it might lead to the identification of the voter. But that in our opinion, is not the way in which these objections ought to be dealt with. We think we ought to adhere to the language of the statute itself, which says that the mark must be a mark by which the voter *can* (not *might* possibly) be identified; whether the mark is such, is a matter of fact.

"In the cases before us, altough one or two of the papers bore marks other than that necessary to indicate the vote, we have been unable to come to the conclusion that such marks standing alone could lead to the identification of the voter, and we think we ougat not to give way to objections which were supported only by the mere suggestion that the marks referred to *might* possibly afford a clue to the identification of the voter."

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall re-seal each sealed packet after examination. The returning officer shall report to the Clerk of the Crown in Chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

In the case of a municipal election or an election of county councillors, no return is to be made to the Clerk of the Crown in Chancery. See the Municipal Corporations Act, 1882, Sched. 3, Part III. r. 6, *post*.

38. Lastly, the returning officer shall forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as

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circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes list, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

In municipal elections the packets, etc., are to be forwarded to the town clerk. See r. 64, *post*. In an election of county councillors they will be forwarded to the clerk of the council. See the Local Government Act, s. 75, sub-s. (5), *ante*, p. 142.

39. The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's Superior Courts shall cause them to be destroyed.

In a municipal election the documents are retained by the town clerk and destroyed by him, subject to the directions of the borough council. In an election of county councillors the clerk of the council will perform the like duties. See the note to the preceding rule.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons or under the order of one of Her Majesty's Superior Courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place and mode of inspection or production as the House or court making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Any power given to a court by this rule may be exercised by any judge of such court at chambers.

In the case of a municipal election, or an election of county councillors, the order for inspection will be made by the county court. See r. 64, *post*.

A prosecution having been instituted against the deputy-returning officer, who had presided at a booth during a municipal election, for offences under the Ballot Act, 1872 (35 & 36 Vict. c. 33), a county court judge, in the exercise of jurisdiction given by Sched. 1, Part II. r. 64 of the Act, made an order directing the town clerk of the borough to produce and show, for the purpose of the prosecution, certain rejected ballot papers, counterfoils, counted ballot papers, and spoilt ballot papers relating to the same polling station, and to open the sealed packets containing those documents, and the marked copy of the register, and to take all such proper means as he should deem necessary in order that the mode in which any particular elector had voted should not be discovered; and further ordered that no person should be allowed to see the face of the counted ballot papers. At the trial of the indictment against the prisoner, charging him with having fraudulently placed papers purporting to be, but to his knowledge not being, ballot papers in the ballot box, BLACKBURN, J., allowed the counterfoils and marked register produced under the aforesaid order to be given in evidence, and the face of the voting papers to be inspected so as to show how the votes appeared to have been given. *Held*, that this was rightly done. *R.* v. *Beardsall*, 1 Q. B. D. 452; 45 L. J. M. C. 157; 34 L. T. (N.S.) 660; 40 J. P. 583.

Liberty was given to the Clerk of the Crown to open the packet of rejected ballot papers, and to permit a petitioner and his agents to inspect certain ballot papers which had been rejected by the returning officer on the ground that there were upon them writings or marks by which the voters could be identified, but

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so as not to permit any inspection of the numbers on the backs of the ballot papers corresponding with the number on the counterfoils. *Tyrone Election Petition*, 7 Ir. R. C. L. 190; 21 W. R. 627. Where at a parliamentary election there was a bare majority on a large number of votes and an affidavit was filed that it was impossible that the return could be correct and that there must have been a miscounting, the court would not allow an inspection of the ballot papers in the absence of a petition, and doubted whether they had jurisdiction to make such an order unless a petition had been presented. *Darwen case*, 2 T. L. R. 220. Generally as to when inspection will be granted, see *Stowe* v. *Jolliffe*, *ante*, p. 221.

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed upon, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

In the case of municipal elections, or elections of county councillors, an order may be made under this rule by the county court. See r. 64, *post*.

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

In the case of a municipal election, or an election of county councillors, the regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied are to be prescribed by the borough council (or county council as the case may be), with the consent of a Secretary of State. See r. 64, *post*.

Leave to inspect the marked register of voters, returned by the presiding officer to the Clerk of the Crown in Chancery under the Ballot Act, 1872, will be granted where the petition against the return of a candidate at a parliamentary election charges bribery and treating although it does not pray a scrutiny. *James* v. *Henderson*, 43 L. J. P. C. 238; 30 L. T. (N.S.) 527; 38 J. P. 663.

43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

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45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

By stating at the close of the poll the number of votes given to each candidate at a municipal election, the returning officer makes a sufficient declaration under s. 2 of this Act, and the effect of that declaration is not altered by reason of a public notice given on the following day under this rule and the next. *R.* v. *Bangor* (*Mayor, etc., of*), 18 Q. B. D. 349; 56 L. J. Q. B. 326; 56 L. T. (N.S.) 434; 35 W. R. 158; 51 J. P. 51.

46. Where the returning officer is required or authorized by this Act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorized to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

As to the power to order arrest, see 6 & 7 Vict. c. 18, s. 86, *ante*, p. 216. As to the power to order the exclusion or ejection of any person, see s. 9 of this Act, *ante*, p. 211.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

But though a candidate does not himself undertake the duties of an agent and does not assist his agent, he is nevertheless entitled to be present at polling stations. *Clementson* v. *Mason*, cited in the notes to s. 9, *ante*.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

As to agents at municipal elections and elections of county councillors, see the Municipal Corporations Act, 1882, s. 58, sub-s. (6), *post*.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorized to attend at a polling station, or at the counting of the votes, shall before the

opening of the poll make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

As to the penalties for infringement of secrecy, see s. 4.
As to the form of declaration, see Sched. 2, *post*.

55. Where in this Act any expressions are used requiring or authorizing or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above mentioned.

57. In this Act—

* * * * *

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

See s. 85, of 6 & 7 Vict, c. 18, in the notes to s. 24, *ante*, p. 215, and as to agents at a municipal election or an election of county councillors, see the Municipal Corporations Act, 1882, s. 58, sub-s. (6), *post*.

* * * * *

PART II.

Rules for Municipal Elections.

64. In the application of the provisions of this schedule to muncipal elections the following modifications shall be made:—

(*a*.) The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station:

(*b*.) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of Part One of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely,

(*a*.) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election

Schedule 1.

RULE 64.

is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty's Superior Courts; but an appeal from such county court may be had in like manner as in other cases in such county court;

(*b.*) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's Principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough:

(*c.*) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

Municipal election includes an election of county councillors. Register of voters at the latter election means the division register, *i.e.*, that part of the roll of county electors which relates to the electoral division.

The other modifications above-mentioned have been noticed in the notes to the several rules.

SECOND SCHEDULE.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

Form of Ballot Paper.

Form of Front of Ballot Paper.

Counterfoil No.		
1	**BROWN** (John Brown, of 52, George St., Bristol, Merchant.)	
2	**JONES** (William David Jones, of High Elms, Wilts, Esq.)	
3	**MERTON** (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
4	**SMITH** (Henry Sydney Smith, of 72, High Street, Bath, Attorney.)	

NOTE:
The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.

Form of Back of Ballot Paper.

No.

Election for county [*or* borough, *or* ward].

18

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to Printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station, and in every Compartment of every Polling Station.

The voter may vote for candidate .

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of Statutory Declaration of Secrecy.

I solemnly promise and declare, That I will not at this election for do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Form of Declaration of Inability to Read.

I, *A.B.*, of , being numbered on the register of voters for the county [*or* borough] of , do hereby declare that I am unable to read.

A.B., his mark.

day of .

I, the undersigned, being the presiding officer for the polling station for the county [*or* borough] of , do hereby certify, that the above declaration, having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed, *C.D.*,
Presiding officer for polling station
for the county [*or* borough of .

day of .

PARLIAMENTARY ELECTIONS (RETURNING OFFICERS) ACT, 1875.

(38 & 39 Vict. Cap. 84.)

An Act to regulate the Expenses and to control the Charges of Returning Officers at Parliamentary Elections.

[13th August, 1875.]

Whereas it is expedient to amend the law relating to the expenses and charges of returning officers at parliamentary elections :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

This Act is set out so far as it is incorporated by the Local Government Act, 1888, s. 75 (18) (19), *ante*, p. 147. It is amended by the 48 & 49 Vict. c. 62, in a small particular mentioned in a note to Sched. 1, Part I., of this Act, *post*, and by the 49 & 50 Vict. c. 57, which is set out *post*.

* * * * *

The accounts of a returning officer may be taxed.

4. Within twenty-one days after the day on which the return is made of the persons elected at the election, the returning officer shall transmit to every candidate or other person from whom he claims payment either out of any deposit or otherwise of any charges in respect of the election, or to the agent for election expenses of any such candidate, a detailed account showing the amounts of all the charges claimed by the returning officer in respect of the election, and the share thereof which he claims from the person to whom the account is transmitted. He shall annex to the account a notice of the place where the vouchers relating to the account may be seen, and he shall at all reasonable times and without charge allow the person from whom payment is claimed, or any agent of such person, to inspect and take copies of the vouchers.

The returning officer shall not be entitled to any charges which are not duly included in his account.

If the person from whom payment is claimed objects to any part of the claim, he may, at any time within fourteen days from the time when the account is transmitted to him, apply to the court as defined in this section for a taxation of the account, and the court shall have jurisdiction to tax the account in such manner and at such time and place as the court thinks fit, and finally to determine the amount payable to the returning officer and to give and enforce

Sect. 4.

judgment for the same as if such judgment were a judgment in an action in such court, and with or without costs at the discretion of the court.

The court for the purposes of this Act shall be in the city of London the Lord Mayor's Court, and elsewhere in England the county court, and in Ireland the Civil Bill Court, having jurisdiction at the place of nomination for the election to which the proceedings relate.

The court may depute any of its powers or duties under this Act to the registrar or other principal officer of the court.

Nothing in this section shall apply to the charge of the returning officer for publication of accounts of election expenses.

The expenses of the returning officer are payable by the county council out of the county fund as general expenses, and not by the candidate, and claims must be made accordingly. See s. 75 (17) (19) of the Local Government Act, 1888, *ante*, p. 147, 148.

The period within which application for taxations may be made in the case of a county council election is one calendar month instead of fourteen days as provided by the above section. See s. 75 (19) of the Local Government Act, 1888.

It was held that where the accounts of a returning officer had been taxed by the registrar of a county court, under the above section, the county court judge had no discretion to review the registrar's taxation. *R.* v. *Lambeth* (*County Court, Judge of*), 17 Q. B. D. 96. But see now 49 & 50 Vict. c. 57, *post*.

An application made within the specified time to the registrar of the county court when the judge is not sitting is properly made within the above section. *R.* v. *Bloomsbury* (*County Court, Judge of*), 17 Q. B. D. 788 ; 55 L. J. Q. B. 443 ; 56 L. T. (N.S.) 321 ; 51 J. P. 212.

A returning officer at a parliamentary election is not entitled to remuneration for personal services rendered by him in the conduct of the election, under the heading of professional or other assistance, which he has not, as a matter of fact, employed. *Ex parte Walker*, *re Shoreditch* (*Hoxton Division*) *Parliamentary Election* (1886), 56 L. T. (N.S.) 529.

At a parliamentary election the high sheriff was the returning officer, the duties being performed on his behalf by a firm of solicitors, one of whom was under-sheriff. The returning officer's charges included a charge for professional assistance rendered to him by the under-sheriff's firm, which was disallowed on taxation, on the ground that no detailed account was sent in to the returning officer within fourteen days of the return, as required by s. 5 of the Returning Officers Act, 1875. *Held*, that the charge was wrongly disallowed on the above ground, the section not being applicable as between the returning officer and the candidates to charges made for work done for the returning officer by his own agents. The right of a returning officer under s. 2 of the same Act to be paid his reasonable charges and expenses is not limited to such charges only as have been vouched under ss. 4 and 5 of the Act, nor is a charge made by him to be disallowed merely because in the account sent in by him to candidates it appears under a wrong heading. A returning officer is not limited to charging for such services and expenses as come *verbatim et literatim* within the descriptions of the schedule to the Act, if they are services and expenses of one of the kinds mentioned in the schedule. A charge for storing ballot boxes from one election to another, in order to

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NOTE.

avoid the expense of procuring fresh ones, was therefore allowed, although no such charge is expressly provided for in the schedule to the Act. *In re Election for South-Eastern Division of Essex*, 19 Q. B. D. 252; 56 L. J. Q. B. 365; 57 L. T. (N.S.) 104; 36 W. R. 44.

Claims against a a returning officer.

5. Every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election, except for publication of accounts of election expenses, shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

Where application is made for taxation of the accounts of a returning officer, he may apply to the court as defined in this Act to examine any claim transmitted to him by any person in pursuance of this section, and the court after notice given to such person, and after hearing him, and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs, and the determination of the court shall be final for all purposes, and as against all persons.

Use of ballot boxes, etc. provided for municipal elections.

6. In any case to which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the court, upon taxation of his accounts, shall have regard to the provisions of this section.

Notices to be given by returning officers.

7. There shall be added to every notice of election to be published under the provisions of the Ballot Act, 1872, the notification contained in the second schedule to this Act with respect to claims against returning officers.

* * * * *

SCHEDULES.

Schedule 1.

FIRST SCHEDULE.

CHARGES OF RETURNING OFFICERS.

The following are the maximum charges to be made by the returning officer, but the charges are in no case to exceed the sums actually and necessarily paid or payable.

PART I.—COUNTIES AND DISTRICT OR CONTRIBUTORY BOROUGHS.

This Part of this Schedule applies to an election for a county, or for either of the boroughs of Aylesbury, Cricklade, Monmouth, East Retford, Stroud, and New Shoreham, or for any borough or burgh consisting of a combination of separate boroughs, burghs, or towns.

	£ s. d.
For preparing and publishing the notice of election -	2 2 0
For preparing and supplying the nomination papers -	1 1 0
For travelling to and from the place of nomination, or of declaring the poll at a contested election, per mile.	0 1 0
For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings.	The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.
For constructing a polling station, with its fittings and compartments, in England.	7 7 0
And in Ireland the sum or sums payable under the provisions of the 13th and 14th Victoria, chap. 68, and 35th and 36th Victoria, chap. 33.	
In Ireland the returning officer shall use a court house where one is available as a polling station, and his maximum charge for using and fitting the same shall in no case exceed three pounds three shillings.	
For each ballot box required to be purchased - -	1 1 0
For the use of each ballot box, when hired - -	0 5 0
For stationery at each polling station - - -	0 10 0
For printing and providing ballot papers, per thousand	1 10 0
For each stamping instrument - - - - - -	0 10 0
For copies of the register - - - - - - -	The sums payable by statute for the necessary copies.
For each presiding officer - - - - - - -	3 3 0
For one clerk at each polling station where not more than 500 voters are assigned to such station.	1 1 0
For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the the first 500 assigned to such polling station.	1 0 0
For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors.	1 1 0
For making the return to the clerk of the Crown -	1 1 0
For the preparation and publication of notices (other than the notice of election).	Not exceeding for the whole of such notices 20*l.*, and 1*l.* for every additional 1,000 electors above 3,000.

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	£ s. d.
For conveyance of ballot boxes from the polling stations to the place where the ballot papers are to be counted, per mile.	0 1 0
For professional and other assistance in and about the conduct of the election.	In a contested election not exceeding 25*l.*, and an additional 3*l.* for every 1,000 registered electors or fraction thereof above 3,000 and up to 10,000, and 2*l.* for every 1,000 or fraction thereof above 10,000. In an uncontested election, one fifth of the above sums.
For travelling expenses of presiding officers and clerks, per mile.	0 1 0
For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate.	2 2 0
For all other expenses - - - - - - -	In a contested election not exceeding 10*l.*, and an additional 1*l.* for every 1,000 electors or fraction thereof above 1,000. In an uncontested election, nil.

NOTE.—*Travelling expenses are not to be allowed in the case of any person unless for distances exceeding two miles from the place at which he resides.*

The provisions of the above Schedule are modified by s. 4 of the Parliamentary Elections (Returning Officers) Act, 1885 (48 & 49 Vict. c. 62), which provides that notwithstanding the above scale of charges it shall be lawful in any county constituency in England for the returning officer to charge four guineas for each presiding officer, and thirty shillings for each clerk at a polling station.

* * * * *

SECOND SCHEDULE.

1. NOTIFICATION to be added to the NOTICE of ELECTION.

Take notice, that by the Parliamentary Elections (Returning Officers) Act, 1875, it is provided that every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer, for the purposes of an election (except for publications of account of election expenses), shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

PARLIAMENTARY ELECTIONS (RETURNING OFFICERS) ACT (1875) AMENDMENT ACT, 1886.

(49 & 50 Vict. Cap. 57.)

An Act to amend the provisions of the Parliamentary Elections (Returning Officers) Act, 1875. [25th June, 1886.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

This Act amends the 38 & 39 Vict. c. 84, *ante* p. 232, and with that Act is incorporated by the Local Government Act, 1888, s. 75 (19), *ante*, p. 147.

Review of taxation.

1. The judge or officer by whom any account or claim is taxed or examined under the Parliamentary Elections (Returning Officers) Act, 1875 (herein called the "principal Act"), shall deliver to the returning officer, and to the other party to the taxation or examination, a certificate showing the items and amounts allowed or disallowed, with a copy of any order or judgment made thereon.

Either party may, within seven days of the delivery to him of such certificate, give notice in writing to the said judge or officer of intention to appeal, specifying in the notice the items and amounts in respect of which he intends to appeal.

The said judge or officer shall thereupon forthwith transmit to the prescribed taxing officer of the superior court the said account or claim, with any vouchers relating thereto, the certificate and the notice of appeal, and such taxing officer shall forthwith proceed to review the taxation or examination in the usual manner, or in such manner as may be prescribed, and shall, if required, receive evidence in relation to the matters in dispute, and may confirm or vary the certificate, and direct by whom all or any part of the costs of review are to be paid, and shall return the certificate as confirmed or varied to the said judge or officer with any such direction, and effect shall be given to a certificate as so confirmed or varied, and to any such direction, as if the same had been a judgment of the court as defined in the principal Act.

Any taxation or review of taxation under this Act shall be subject to appeal to the superior court in like manner as any ordinary taxation of costs is now subject.

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In this Act "superior court" means in England the Queen's Bench Division of the High Court of Justice in England, and in Ireland the Common Pleas Division of the High Court of Justice in Ireland. "Prescribed" means prescribed by rules of the superior court in England or Ireland as the case may be.

Short title.

2. This Act may be cited as the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, and shall be read as one with the principal Act.

MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 VICT. CAP. 50.)

THE following sections and schedules of this Act are incorporated with the Local Government Act, s. 75, *ante*, p. 141. Some other sections of this Act are referred to in the Local Government Act, but these are set out in the notes to the sections of that Act containing such references.

The notes to the following sections have been for the most part limited to their application to county councils.

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

Corporate Name.

Name of municipal corporation.

8. The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city, the mayor, aldermen, and citizens of the city.

This section does not really apply to county councils, for by s. 79 of the Local Government Act, *ante*, p. 153, the council of each county are incorporated by the name of the county council, with the prefix of the name of the administrative county. By s. 34, sub-s. (1), of the same Act, *ante*, p. 73, the mayor, aldermen, and burgesses of each borough mentioned in the Third Schedule, that is, of the county boroughs acting by the council, have all the powers and duties of the county council within the borough ; but this involves no change of the name of the borough or city.

Burgesses (a).

Qualification of burgess.

9.—(1.) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess (*b*).

(2.) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows (*c*) :

(a.) Is of full age ; and

(b.) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months, in occupation (*d*), joint or several (*e*), of any house, warehouse, counting-house, shop or other building (*f*) (in this Act referred to as qualifying property) in the borough (*g*); and

(c.) Has during the whole of those twelve months resided in the borough, or within seven miles thereof (*h*) ; and

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(d.) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate (*i*) ; and

(e.) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding fifth of January(*k*).

(3.) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—

(a.) Is an alien (*l*) ; or

(b.) Has within the twelve months aforesaid received union or parochial relief or other alms (*m*) ; or

(c.) Is disentitled under any Act of Parliament (*n*).

(*a*) It is provided by the County Electors Act, 1888 (51 Vict. c. 10), s. 2, *post*, that "for the purpose of the election of county authorities in England the burgess qualification, that is to say, the qualification enacted by s. 9 of the Municipal Corporations Act, 1882, shall extend to every part of a county not within the limits of a borough, and a person possessing in any part of a county outside the limits of a borough such burgess qualification shall be entitled to be registered under the Act as a county elector in the parish in which the qualifying property is situate. Sections 9, 31, 33, and 63 of the Municipal Corporations Act, 1882, and any enactments of that or any other Act affecting the same, shall extend to so much of every county as is not comprised within the limits of a municipal borough, in like manner as if they were herein re-enacted, with the substitution of 'county' for 'borough,' and of 'county elector' for 'burgess,' and with the other necessary modifications."

(*b*) By s. 45, sub-s. (8), *post*, every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

By s. 63, *post*, women may be enrolled as burgesses, and by that section, as applied by the County Electors Act, 1888 (51 Vict. c. 10), s. 2, sub-s. (2), women may also be enrolled as county electors.

(*c*) This is no longer the only qualification of a burgess or county elector. It is provided by the County Electors Act, 1888 (51 Vict. c. 10), s. 3, that every person who is entitled to be registered as a voter in respect of a 10*l*. occupation qualification within the meaning of the provisions of the Registration Act, 1885, which are set out in the schedule to that Act, shall be entitled to be registered as a county elector, and to be enrolled as a burgess, in respect of such qualification, in like manner in all respects as if the section of the Municipal Corporations Act, 1882, relating to a burgess qualification included the said 10*l*. occupation qualification. The schedule to the 51 Vict. c. 10, above referred to, is as follows :—

"Definition of Ten Pounds Occupation Qualification.

"A person entitled to be registered as a voter in respect of a ten pounds occupation qualification in a borough, municipal or parliamentary—

(a.) Must during the whole twelve months immediately preceding the fifteenth day of July have been an occupier as owner or tenant of some land or tenement in a parish [or township] of the clear yearly value of not less than ten pounds ; and

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(b.) Must have resided in or within seven miles of the borough during six months immediately preceding the fifteenth day of July; and

(c.) Such person, or someone else, must during the said twelve months have been rated to all poor rates made in respect of such land or tenement; and

(d.) All sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the fifth day of January next before the registration, or on account of any assessed taxes due before the said fifth day of January, must have been paid on or before the twentieth day of July.

"If two or more persons jointly are such occupiers as above mentioned, and the value of the land or tenement is such as to give ten pounds or more for each occupier, each of such occupiers is entitled to be registered as a voter.

"If a person has occupied in the borough different lands or tenements of the requisite value in immediate succession during the said twelve months, he is entitled in respect of the occupation thereof to be registered as a voter in the parish [or township] in which the last occupied land or tenement is situate."

(*d*) **Occupation.**—It is provided by s. 257, sub-s. (3), *post*, that nothing in this Act shall entitle any person to be enrolled as a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of these universities.

By s. 33, sub-s. (2), *post*, the qualifying property need not be throughout the twelve months constituting the period of qualification the same property, or in the same parish.

For the distinction between an occupier and a lodger the following cases may be referred to:—*Bradley* v. *Baylis*, 8 Q. B. D. 194; 51 L. J. Q. B. 183; 46 L. T. (N.S.) 253; 30 W. R. 823; 45 J. P. 847; *Morton* v. *Palmer*, 9 Q. B. D. 89; 51 L. J. Q. B. 307; 46 L. T. (N.S.) 285; 30 W. R. 115; 46 J. P. 150; *Ness* v. *Stevenson*, 9 Q. B. D. 245; 47 J. P. 134; *Ancketill* v. *Baylis*, 10 Q. B. D. 577; 52 L. J. Q. B. 104; 48 L. T. (N.S.) 343; 31 W.R. 233; 47 J. P. 356; *Heawood* v. *Bone*, 13 Q. B. D. 179; 51 L. T. (N.S.) 125; 48 J. P. 710; *M'Laughlin* v. *Chambers*, [1896] 2 Ir. Rep. 497.

Occupation of a dwelling-house by virtue of an office, service or employment within the meaning of 48 Vict. c. 3, s. 3, is no qualification for the municipal franchise. *McClean* v. *Pritchard*, 20 Q. B. D. 285; 58 L. T. (N.S.) 337; 36 W. R. 508; 52 J. P. 519. This decision will also apply to county electors. The distinction between occupation such as gives the occupier the service franchise and occupation within the meaning of this section, is pointed out in *Marsh* v. *Estcourt*, 24 Q. B. D. 147; 59 L. J. Q. B. 100; 38 W. R. 495: 54 J. P. 294.

Spaces in a market place the precise position of each of which was known and determined, were held to entitle the occupiers to the borough franchise. *Hall* v. *Metcalfe*, [1892] 1 Q. B. 208; 61 L. J. Q. B. 53; 66 L. T. (N.S.) 496; 8 T. L. R. 46.

Where a tenant became bankrupt, but continued in occupation and paid rent during the whole of the qualifying period, the trustee in bankruptcy not interfering, it was held that he must be regarded as having been in occupation during the whole of the qualifying period for the purposes of the parliamentary franchise. *Mackay* v. *McGuire*, [1891] 1 Q. B. 250; 60 L. J. Q. B. 24; 64 L. T. (N.S.) 83; 39 W. R. 109; 55 J. P. 214; 7 T. L. R. 55.

Where the occupier of premises transferred them to a company, and on the same day took from the company a demise of part of the premises which he

Sect. 9 (3). Note.

continued to occupy as an office, it was held that there had been a continuous occupation of the office during the whole of the qualifying period: *Timmins* v. *Albiston*, [1895] 2 Q. B. 58; 64 L. J. Q. B. 564; 59 J. P. 663.

A husband residing with his wife, who carried on business in her own name, and was the rated occupier of the premises, was held not to be entitled to be registered as the occupier. *Prentice* v. *Markham*, 9 T. L. R. 58.

Weekly tenants of stalls in a market building which was closed and locked during the night, were held not to be occupiers within the meaning of s. 30 of the Municipal Corporations (Ireland) Act, 1840. *Lovell* v. *Callaghan*, [1894] 2 Ir. R. 346.

As to occupation on succession by descent, marriage, etc., see s. 33, *post*.

(*e*) The words "joint or several" were inserted with reference to the decision in *R.* v. *The Mayor, etc. of Exeter*, L. R. 4 Q. B. 114, *post*. Where several persons entitled to occupy a house jointly by agreement between themselves, arranged to occupy separately in turn during the year, it was held that they were not entitled to be registered as having been in joint occupation during the qualifying year. *Rowland* v. *Pritchard*, 62 L. J. Q. B. 319; 68 L. T. (N.S.) 586; 57 J. P. 759; 9 T. L. R. 279. For a case where several persons had separate rooms in a house, using the rest of the rooms in common, see *Hollands* v. *Chambers*, 32 L. R. Ir. 156.

It is provided by s. 31, *post*, that where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part. See the note to that section.

(*f*) **House, warehouse, etc.**—By s. 31, *post*, the terms house, warehouse, counting-house, shop, or other building, include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case. See the notes to that section, *post*.

It will be observed that the text requires occupation of some building. The alternative qualification under s. 3 of the County Electors Act, 1888, already mentioned (see note (*c*) *supra*), requires occupation only of some land or tenement.

Upon the meaning of these terms reference may be made to the following cases:—

The word "house" means *primâ facie* a dwelling-house. *Surnam* v. *Darley*, 14 M. & W. 181; *Nunn* v. *Denton*, 8 Scott N. R. 794; *Daniel* v. *Coulsting*, *ib.* 949. It probably means a dwelling-house in the above section, contrasted as it is with places of business. It should be observed that the meaning of a word may vary considerably according to the purposes and objects of the Act in which it is used. Consequently, the decisions on the meaning of the word "house" as used in the Metropolis Management and Public Health Acts must not be taken to apply generally. Under these Acts a church has been held not to be a house, while a dissenting chapel is a house. *Angell* v. *Paddington Vestry*, L. R. 3 Q. B. 714; 37 L. J. M. C. 171; 32 J. P. 742; *Caiger* v. *St. Mary, Islington* (*Vestry of*), 50 L. J. M. C. 59; 45 J. P. 570; *Wright* v. *Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17; 34 W. R. 221. On the other hand, a church has been held to be a house within the meaning of a bye-law prescribing a building-line. *Folkestone* (*Mayor, etc. of*) v. *Woodward*, L. R. 15 Eq. 159; 42 L. J. Ch. 782. It may be doubted whether these decisions throw any light on the meaning of the word "house" as used in the text.

"Counting-house" includes a solicitor's office. *Re Creek*, 3 B. & S. 459.

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"Shop." In an Irish case stalls in a market building which were open in front, and fitted with moveable benches, and let to weekly tenants, were held not to be shops. *Lovell* v. *Callaghan*, [1894] 2 Ir. R. 346.

The words "or other building" must be read as signifying other buildings *ejusdem generis*, according to the well-known rule for the construction of statutes. The words are almost precisely similar to those in the Reform Act, 2 Will. 4, c. 45, s. 27. Under that Act a stable built of stone and having a tiled roof was held to be a building. *Whitmore* v. *Bedford*, 5 M. & G. 9; 13 L. J. C. P. 55. Rooms in a factory were let to cotton spinners separately, the rents varying according to the size of the room. The approach to the room was either by a common staircase leading from the entrance to the factory (to which there was a door which was never fastened), or by separate outside staircases, or by doors opening into the yard. Each tenant had his own spinning machine (which was worked by a steam-engine belonging to the landlord), it being part of each contract that the landlord should supply steam power), and also the exclusive use of his room, and the key to the door thereof. It was held that the occupier of each room was the exclusive occupier of a building within the meaning of 2 Will. 4, c. 45, s. 27. *Wright* v. *Stockport (Town Clerk of)*, 5 M. & G. 33; 13 L. J. M. C. 50. A shed stood against a wooden paling, but was not fastened to it. Six posts put into the ground supported a tarpaulin or a tar cloth which formed the roof. One of the sides of the shed was boarded up with boards fastened to the posts by nails. It was held that the shed was a building. *Watson* v. *Cotton*, 5 C. B. 51; 17 L. J. C. P. 68. The tenant of land in a borough erected thereon at his own expense a wooden structure with boarded sides and a thatched roof, and supported by wooden posts let into the ground, and used the same for storing potatoes and other things connected with his business of a market gardener. It was held that the shed was a building. The tenant had erected in like manner on the land a pigstye with a slated roof; but in other respects similar to the structure before mentioned. *Semble*, that this was not a building. But where an electioneering agent, for the purpose of creating a vote, erected a shed made of wood having four boarded sides and a boarded roof and being supported by four posts let into the ground, the court, acting on *Cook* v. *Humber*, 11 C. B (N.S.) 33, held that this was not a building. ERLE, C.J., said that an erection to be a building within the Act ought to be in some degree adapted to be used by man either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of a building. *Powell* v. *Farnie*, *Powell* v. *Boraston*, 18 C. B. (N.S.) 168, 175; 34 L. J. C. P. 73: 11 L. T. (N.S.) 736; 11 Jur. (N.S.) 162. A stone building having four walls and a door, used by the tenant for keeping guano and other manures used upon the adjoining land, was held to be a building. So also a stone building roofed, having three sides, and being open in front, with a loft over, used only for milking a cow and keeping a pig, was held a building; and similar erections used only for keeping hay or affording shelter to cattle were held to be buildings. *Morrish* v. *Harris*, L. R. 1 C. P. 156; 35 L. J. C. P. 101.

These cases indicate with tolerable clearness what is a building within the meaning of the text. The decisions on the meaning of the word in other Acts, such as the Public Health Acts, can hardly be cited as authorities upon the construction of the text, having regard to the different objects of the statutes. Some of the more important of these may, however, be enumerated. *Tunstall Turnpike Trustees* v. *Lowndes*, 20 J. P. 374; *R.* v. *Gregory*, 5 B. & Ad. 555; 3 L. J. M. C. 25; *Stevens* v. *Gourlay*, 7 C. B. (N.S.) 99; 1 F. & F. 498; 29 L. J. C. P. 1; 1 L. T. (N.S.) 33; *Poplar Board of Works* v. *Knight*, 13

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(*g*) The qualifying property need not during the whole qualifying year be the same property or in the same parish. See s. 33, *post*.

(*h*) **Residence.**—It is provided by the 48 Vict. c. 9, that from and after the passing of that Act (1885) a man shall not be disqualified from being enrolled or voting as a burgess at any municipal election in a borough, in respect of the occupation of any house, by reason only that during a part of the qualifying period, not exceeding four months in the whole, he has, by letting or otherwise, permitted such house to be occupied as a furnished dwelling-house by some other person, and during such occupation by another person has not resided in or within seven miles of the borough.

It is also provided by 54 Vict. c. 11, *post*, that a person shall not be disqualified from being registered in the local government register of electors for a county or borough in respect of his occupation of any house, warehouse, counting-house, shop, building, land or tenement, by reason only that during part of the qualifying period not exceeding four months at any one time, he has in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, not resided in or within the required distance from such county or borough.

These enactments must be borne in mind as qualifying some of the cases hereafter cited with reference to continuity of residence.

The term "residence" has always to be interpreted with reference to the purpose of the statute in which it is used. See *Blackwell* v. *England*, 27 L. J. Q. B. 124. As used in the text it has evidently the same meaning as it has in the Parliamentary Registration Acts, and the following cases decided with reference to these Acts and to the corresponding provisions of the Municipal Corporations Act, 1835, will serve to explain the text. A., a freeman of the borough of T., resided with his wife and family and carried on his business of a wine merchant at G., more than seven miles from T. He paid ninepence a week for the use of a bedroom and a dark closet in the house of a friend at T., A. keeping the key of the closet in which he deposited wine samples. He slept in the bedroom twelve times in six months. It was held that he had not resided in T. during the twelve months. *Whithorn* v. *Thomas*, 7 M. & G. 1. It was held in *Powell* v. *Guest*, 18 C. B. (N.S.) 72; 34 L. J. C. P. 69; 11 L. T. (N.S.) 599, that a man had not resided in a borough when he had for a portion of the qualifying period been detained in a gaol situate more than seven miles distant therefrom under a sentence of imprisonment for an assault without the option of paying a fine. A., after carrying on business and residing at Exeter for many years, went to live in London. He continued his business, which compelled him often to visit Exeter, and he kept some offices and rooms there. He was in Exeter about twenty times during the period from Michaelmas to July, staying each time from four to ten days. On these occasions he always transacted his business, slept, and took some of his meals in his own rooms. It was held that the question was one of fact, and depended upon whether there had been such a degree of inhabitance as to be in substance and in common sense a residence, and that there was sufficient evidence to show that A. had a residence in Exeter as well as in London. *R.* v. *Exeter* (*Mayor of*), *Wescomb's case*, L. R. 4 Q. B. 110; 19 L. T. (N.S.) 397. A. occupied a house in Exeter jointly with his partner, and carried on his business there. He had the exclusive use of a furnished bedroom and sitting-room. He lived more than seven miles

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from Exeter. He visited Exeter every day, except Sundays, to attend to his business, which he always transacted at this house, and sometimes he took his meals and slept there. It was held that this did not make him an inhabitant householder within the meaning of 5 & 6 Will. 4, c. 76, s. 9. *R.* v. *Mayor of Exeter*, *Dipstale's case*, L. R. 4 Q. B. 114; 19 L. T. (N.S.) 432. Under the corresponding Irish Act it was held that where a man had within the city of Cork a store to which was attached a room in which he had a bed, and occasionally slept and took his meals, he did not reside so as to be an inhabitant householder. *M'Dougal* v. *Creedon*, 7 Ir. Rep. C. L. 165. But it was held that to qualify under 5 & 6 Will. 4, c. 76, s. 9, it was sufficient for a municipal officer to have a *bonâ fide* place of residence, although from fortuitous circumstances he did not sleep there. *R.* v. *Boycott*, 14 L. T. (N.S.) 599. A clergyman claimed to be qualified to vote for a borough in respect of the occupation of a dwelling-house in which he usually resided. He entered into an arrangement with another clergyman by which they agreed to exchange duties and residences for a certain period for the purpose of obtaining relaxation and change of scene. In pursuance of this arrangement the claimant left his house and resided for two months, which included the last month of the qualifying year, at a distance of more than seven miles from the borough, in the house of the other clergyman, who came and resided during the same period in the claimant's house. It was held that there was a break of residence which prevented the claimant from being duly qualified. *Ford* v. *Pye*, L. R. 9 C. P. 269; 43 L. J. C. P. 21. The claimant, a freeman of a borough, was an officer in the army serving with his regiment. When he obtained leave of absence, which he usually did for three months in the year, he used to reside at the house of his mother, within seven miles of the borough, occupying apartments there which were always reserved for his use. He was unmarried, and had no other home than his mother's house. It was held that in the case of an officer subject to the will and pleasure of the Queen, and who was not therefore *sui juris*, there could not be such an intention of returning as to constitute a constructive residence, and consequently that the claimant was not qualified. *Ford* v. *Hart*, L. R. 9 C. P. 273; 43 L. J. C. P. 24; 29 L. T. (N.S.) 685. The incumbent of a benefice was absent from October to June, having obtained a license for non-residence. He arranged with a curate to take his duties and live in the rectory-house. He could not have returned without providing another residence for the curate. It was held that the incumbent had not resided in the house. *Durant* v. *Carter*, L. R. 9 C. P. 261. A. occupied lodgings in a borough in London separately and as sole tenant for the qualifying period. He had also a house in the country where he kept an establishment of servants all the year round. When in London he resided at his lodgings, and had done so at intervals for two months out of the twelve. This was held a sufficient residence to entitle him to the lodger franchise. *Bond* v. *St. George*, *Hanover Square* (*Overseers of*), L. R. 6 C. P. 312. A. being employed to attend upon a gentleman, lodgings were taken for him in the same house as the gentleman, in which he might and did usually sleep, but he was not bound by his agreement to do so. A. had also lodgings in the borough of C., where his wife and children resided, and in which he could sleep at any time, and did in fact sleep at least once a week. It was held that A. resided in C. BOVILL, C.J., said he could not distinguish the case from that of a man who has two houses and lives at each when he pleases. In such a case he would reside at both houses. *Taylor* v. *St. Mary Abbots*, *Kensington*, L. R. 6 C. P. 311. (The last two of the preceding cases are important as showing that a person may reside in more than one place, and it

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may be anticipated that many cases of this kind will arise in the application of this section to county electors.) For a portion of the qualifying period A. lived and slept with his wife and child in a room in a cottage allotted to the wife's mother by the trustees of a charity, the rules of which prohibited the inmates from allowing any stranger to reside with them. It was held that this was a sufficient residence to satisfy 2 Will. 4, c. 45, s. 33, and that the continuity of residence was not broken by A.'s absenting himself for one night when sent to London upon his employer's business. *Beal* v. *Ford*, 3 C. P. D. 73; 47 L. J. C. P. 56; 37 L. T. (N.S.) 468. During part of the qualifying period a freeholder who had a bedroom kept for his exclusive use in his father's house in Exeter was absent, serving under articles to a solicitor in London. It was held that, being bound by the articles, he could not be deemed to have had either the liberty or intention to return to the room whenever he liked, and therefore had not resided within the city during the required time. *Ford* v. *Drew*, 5 C. P. D. 59; 49 L. J. C. P. 172: 41 L. T. (N.S.) 478. And see on a similar point, *Ford* v. *Barnes*, 16 Q. B. D. 254; 55 L. J. Q. B. 24; 53 L. T. (N.S.) 675; 34 W. R. 75; 50 J. P. 23; *Spittal* v. *Brook*, 18 Q. B. D. 426; 56 L. J. Q. B. 48; 56 L. T. (N.S.) 364; 35 W. R. 520. The appellant had a bedroom kept for his exclusive use in his father's house in Exeter. During the qualifying year he went to London in quest of employment, and having obtained a temporary situation in London remained there, and then returned to his father's house in Exeter. He remained in Exeter three weeks, and then went back to London, and, obtaining employment there, did not return to Exeter during the rest of the qualifying period. It was held that the facts did not show a constructive residence in Exeter during the qualifying period. *Beal* v. *Exeter* (*Town Clerk of*), 20 Q. B. D. 300; 57 L. J. Q. B. 128; 58 L. T. (N.S.) 407; 36 W. R. 507; 52 J. P. 501; and see *Ward* v. *Mackonochie*, 7 T. L. R. 536; *Sim* v. *Palt*, 20 Ct. of Sess. Cas. 84; *Barlow* v. *Smith*, 9 T. L. R. 57; *Rowland* v. *Pritchard*, 62 L. J. Q. B. 319; 68 L. T. (N.S.) 586; 57 J. P. 759; 9 T. L. R. 279.

As to the effect of imprisonment as constituting a break in the residence necessary to qualify under this section, see *Donnelly* v. *Graham*, 24 L. R. Ir. 127; *McCurran* v. *Chambers*, 28 L. R. Ir. 294; *Charlton* v. *Morris* [1895] 2 Ir. R. 541; *Holland* v. *Hogan*, *ibid*, 551; *Criglington* v. *Gallagher*, 26 L. R. Ir. 134; as to militiamen required to be in camp, *Donoghue* v. *Brook*, 57 L. J. Q. B. 122; 38 L. T. (N.S.) 411; as to sailors under contract of service, see *Hasson* v. *Chambers*, 24 L. R. Ir. 139; *Dutty* v. *Chambers*, 26 L. R. Ir. 100.

As to residence in cases of succession by marriage, descent, etc., see s. 33, *post*.

The seven miles must be measured in a straight line in a horizontal plane, and may be determined by the Ordnance survey map. See s. 231, *post*. It should be mentioned that by s. 77 of the Local Government Act, 1888, *ante*, p. 151, a person who is entitled to be registered as a county elector in respect of any qualification in the administrative county in London in all respects except that of residence, and is resident beyond seven miles but within fifteen miles of the county, shall be entitled to be registered as a county elector.

(*i*) **Rated.**—It is sufficient if it can be shown that a person was intended to be rated, though there may be a mistake in his name as entered in the rate. *R.* v. *Gregory*, 17 Jur. 439.

The 32 & 33 Vict. c. 41, s. 19, provides that the overseers in making out the poor rate shall in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of

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the occupier, enter in the occupiers' column of the rate book the name of every occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise depending upon rating; and it is further provided that any occupier whose name has been omitted, shall, notwithstanding such omission, and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted. This section applies generally to every case in which the owner is rated and not the occupier, without regard to the value of the premises. See *Smith* v. *Seghill* (*Overseers of*), L. R. 10 Q. B. 422; 44 L. J. M. C. 114; 32 L. T. (N.S.) 859; 23 W. R. 745; 40 J. P. 228; *Barton* v. *Birmingham* (*Town Clerk of*), 48 L. J. C. P. 87; 39 L. T. (N.S.) 352; 43 J. P. 24. As to the claim of an occupier to be rated in other cases, see s. 32, *post*.

Observe that this clause refers only to the poor rate, while the next refers to poor rates and borough rates, or, as applied to county electors, county rates.

As to rating in cases of succession by descent, marriage, etc., see s. 33, *post*.

In an Irish case where the qualifying premises had not been rated at all during a part of the qualifying period, the occupier was, nevertheless, held entitled to the franchise. *Bell* v. *Black*, 22 L. R. Ir. 591; and see *Criglington* v. *Anderson*, 26 L. R. Ir. 131; see, however, *Wade* v. *Perkins*, 1 Fox 338, and *Palmer* v. *Wade*, [1894] 1 Q. B. 268; 70 L. T. (N.S.) 407; 58 J. P. 511; from which it would appear that if the premises though rateable have been omitted from the rate the occupier is not entitled to the franchise.

(*k*) **Payment of rates.**—The 32 & 33 Vict. c. 41, s. 7, provides that every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as therein provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of every qualification or franchise which, as regards rating, depends upon the payment of the poor rate. It is probable, though it has not as yet been expressly decided, that this section applies to every case when the rates are paid by the owner. See *Moger* v. *Escott*, L. R. 7 C. P. 163; 41 L. J. C. P. 86; 26 L. T. (N.S.) 99; 20 W. R. 368; 36 J. P. 247; *Abel* v. *Lee*, L. R. 6 C. P. 365; 40 L. J. C. P. 154; 23 L. T. (N.S.) 844; 19 W. R. 625; *Cross* v. *Alsop*, L. R. 6 C. P. 315; 40 L. J. C. P. 154; 23 L. T. (N.S.) 844; 19 W. R. 625; *Cross* v. *Alsop*, L. R. 6 C. P. 315; 40 L. J. C. P. 53; 23 L. T. (N.S.) 589; 19 W. R. 131; 35 J. P. 153; the judgment of LUSH, J., in *Smith* v. *Seghill* (*Overseers of*), *ante*.

On the subject of the payment of rates by a person other than the owner, the following cases may be referred to:—The payment must be by the party's own act; it is not sufficient that another person without his authority pays them for him. *R.* v. *Bridgnorth*, 10 A. & E. 66. Where one building in which there were several occupiers was rated as a whole, and it was part of the agreement with the landlord that he should pay the rates, the rent being higher in consideration of such payment, the landlord and the tenants were jointly rated, and it was held that a payment by any of the persons so jointly rated would be a payment by each of them. *Wright* v. *Stockport* (*Town Clerk of*), 5 M. & G. 33; 13 L. J. C. P. 50; 7 Jur. 1112. An officer in a royal dockyard had the exclusive use of a house in the dockyard in part remuneration for his services. The rates were paid by the Paymaster-General. It was held that this was a sufficient payment by A., as he was rated and liable to pay the rates, and the payment was on his account in part remuneration for his

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NOTE. The words "borough rates" will, in a county, mean "county rates." In a borough they mean only borough rates under the Act, not a rate under a local Act for paving and lighting the borough. *R.* v. *Lichfield* (*Mayor of*), 2 Q. B. 693. A. came into the occupation of the qualifying property in August. A poor rate had been made in the preceding April, and another was made in the September following. A. had paid the last-mentioned rate; but no demand had been made upon him for, nor had he paid or tendered, his proportion of the April rate, though it had not been paid by the outgoing tenant whose name appeared upon that rate. It was held that A. had paid all poor rates which had become payable from him, the liability to pay the proportion of the April rate being subject to the contingency of the outgoing tenant having made default, and of the overseers demanding his proportion from A. *Flatcher* v. *Boodle*, 18 C. B. (N.S.) 152. But an occupier is not entitled to be enrolled if the rates are payable by the owner and have not been paid, though no demand has been made on him as required by the statute. See *Clarke* v. *Buchanan*, 20 L. R. Ir. 244.

As to the payment of rates payable by instalments, see s. 33, *post*.

(*l*) **Alien.**—Persons born in Hanover before the Queen's accession and not naturalised are, though resident in the United Kingdom, aliens. *Stepney Election Petition*, 17 Q. B. D. 54; 55 L. J. Q. B. 331; 54 L. T. (N.S.) 684; 34 W. R. 547.

(*m*) **Alms.**—The word "alms" applies only to such as are parochial. It does not apply to moneys distributed annually from the income of a public charitable institution established by an individual for the use and benefit of the poor housekeepers of a borough not receiving parochial relief from any parish therein. *R.* v. *Lichfield* (*Mayor of*), 2 Q. B. 693. Parochial relief given to a man's her is not relief to the man himself within the meaning of the above section. *R.* v. *Ireland*, L. R. 3 Q. B. 130; 37 L. J. Q. B. 73; 17 L. T. (N.S.) 466; 6 W. R. 358; 32 J. P. 726; and see *Doherty* v. *Chambers*, 22 L. R. Ir. 434. But relief to a man's wife or to any of his children under sixteen is relief to himself by virtue of 4 & 5 Will. 4, c. 76, s. 56. The Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), provides that when a person has received for himself or for any member of his family any "medical or surgical assistance or any medicine at the expense of any poor rate, such person shall not by reason thereof be deprived of any right to be registered, or to vote as a voter, at any election to certain offices, including the office of member of a local board." The term "medical and surgical assistance" is defined to mean all medical and surgical attendance, and all matters and things supplied by or on the recommendation of the medical officer having authority to give such attendance and recommendation at the expense of any poor rate. Several cases have been decided upon the provisions of 2 Will. 4, c. 45, s. 36. The appellant having applied to the guardians for work, was employed by them, by way of relief, in breaking stones, and paid out of the parochial funds, the amount paid to him being much greater than the value of his work to the guardians. It was held that he had received "parochial relief or other alms" within 2 Will. 4, c. 26, so as to disqualify him from voting. *Mugarrill* v. *Whitehaven* (*Overseers of*), 16 Q. B. D. 242; 55 L. J. Q. B. 38; 53 L. T. (N.S.) 667; 34 W. R. 279; 40 J. P. 743. By the provisions of a charity, regulated by a scheme of the Charity Commissioners, a certain number of the poor inhabitants of a borough, who had not been for two years in receipt of parish relief, were received into an almshouse where certain weekly payments and other benefits were bestowed on them. They were liable to be

removed for misconduct and other causes. It was held (following *Harrison* v. *Carter*, 2 C. P. D. 26 ; 46 L. J. C. P. 27 ; 35 L. T. (N.S.) 511 ; 25 W. R. 182) that they were disqualified from voting, having received alms within 2 Will. 4, c. 45, s. 36. *Baker* v. *Monmouth* (*Town Clerk of*), 53 L. T. (N.S.) 668 ; 34 W. R. 64 ; 49 J. P. 776. The wife of the appellant, being near her confinement, applied to the relieving officer of the union for an order for the attendance of a medical man. The guardians authorized the relieving officer to give her an order for such attendance, but she was, in fact, attended during her confinement by an uncertificated midwife, who was sent to her and paid by the relieving officer. It was held that the relief afforded to his wife was "medical assistance" within 48 & 49 Vict. c. 46, s. 2, and that the appellant was not disqualified from being registered as a voter. *Honeybone* v. *Hambridge*, 18 Q. B. D. 418 ; 56 L. J. Q. B. 46 ; 51 J. P. 103.

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The claimants during the qualifying period occupied almshouses in a borough, and received out of a charitable fund for the sustenance of the inmates allowances of 6*s.* a week. The charity was regulated by an Act of Parliament, which provided that the inmates of the almshouses were to be persons who from age, ill-health, accident, or infirmity, should be unable to maintain themselves. It was held that the facts showed a receipt of alms, which by the law of Parliament disqualified from voting under 2 & 3 Will. 4, c. 45, s. 36. *Edwards* v. *Lloyd*, 20 Q. B. D. 302 ; 57 L. J. Q. B. 121 ; 58 L. T. (N.S.) 409 ; 52 J. P. 519 ; and see *Dix* v. *Kent*, 63 L. T. (N.S.) 641 ; 39 W. R. 173 ; 55 J. P. 213 ; 7 T. L. R. 46.

On the other hand, the inmates of a licensed victuallers, asylum who were only eligible as inmates by reason of their having contributed to the funds of the institution were held not to be disqualified on being in receipt of alms though the institution was largely supported by private benevolence. *Daniels* v. *Allard*, 1 Fox, 70; W. N. (1887), 222.

It is provided by s. 33, *post*, that a person shall not be disentitled to be enrolled as a burgess by reason only (a) that he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority, or (b) that his child has been admitted to and taught in any public or endowed school.

(*n*) Constables were formerly disentitled under various Acts of Parliament from voting at elections ; their disabilities have now been removed by 50 & 51 Vict. c. 9 and 56 Vict. c. 6.

Persons may be "disentitled" within the meaning of the text under the Corrupt Practices Acts (46 & 47 Vict. c. 51), ss. 6, 10 ; 47 & 48 Vict. c. 70, ss. 2, 7 ; the Felony Act (33 & 34 Vict. c. 23), s. 2 ; the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69), s. 3, and perhaps under some other statutes.

Council : Mayor, Aldermen, and Councillors.

Constitution of council.

10.—(1.) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise.

(2.) The council shall consist of the mayor, aldermen, and councillors.

It is provided by the Local Government Act, s. 1, *ante*, p. 1, that a council shall be established in every county, and shall consist of the chairman, aldermen, and councillors. And, by s. 2, the council of a county and the

Sect. 10 (2) Note. members thereof shall be constituted and elected and conduct their proceedings in like manner, and be in the like position in all respects, as the council of a borough divided into wards, subject to various modifications which are indicated throughout this volume. The county council is incorporated by s. 79 of the Local Government Act, *ante*, p. 153.

Qualification of councillors

11.—(1.) The councillors shall be fit persons elected by the burgesses.

(2.) (*a*) A person shall not be qualified to be elected or to be a councillor, unless he—

(a) is enrolled and entitled to be enrolled as a burgess (*b*) ; or

(b) being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles, but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made (*c*) ; and

(c) in either of those cases, is seised or possessed of real or personal property, or both, to the value or amount, in the case of a borough having four or more wards (*d*), of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value (*e*) of thirty pounds, and in the case of any other borough of fifteen pounds.

(3.) Provided, that every person shall be qualified to be elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor ; which last mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification (*f*).

(4.) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

(*a*) This section contains three qualifications of a councillor. These are :—

(1.) Enrolment as a burgess and possession of the property qualification.

(2.) Enrolment in the non-resident list and possession of the property qualification.

(3.) The right to elect to the office of councillor without property qualification, but subject to this modification, that the office shall become vacant after six months' non-residence.

To these qualifications must be added certain others provided by the Local Government Act, s. 2, *ante*, p. 2.

(4.) Being a peer owning property in the county.

(5.) Registration as a parliamentary voter in respect of the ownership of property.

(*b*) The right of a person to be enrolled as a burgess depends upon s. 9, as amended by the County Electors Act, 1888. See the notes to that section, *ante*.

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NOTE.

The mere fact of enrolment on the burgess roll is not sufficient. The candidate must also be entitled to be enrolled. If a person is on the roll but not entitled to be enrolled, he is not qualified to be a councillor, but in that case he is not liable to penalties under s. 41 (2), *post*. See *Middleton* v. *Simpson*, 5 C. P. D. 183 ; 49 L. J. C. P. 312 ; 28 W. R. 629 ; 44 J. P. 251.

On the trial of a petition against the election of the respondent to the office of town councillor, it was proved that two years before the election the respondent, with his wife, family, and furniture, moved into an inn kept by his mother, and a verbal agreement was entered into, by which the mother was to retire from the business, the respondent was to take it over, and the mother was to continue to reside in the house and have her board, lodging, and clothing free of charge. The respondent took over the entire management of the inn, but there was no assignment of the lease or transfer of the licence to the respondent, and the excise licences were still taken out in the mother's name, which remained alone over the door. The respondent requested that his name might be inserted in the rate book as joint occupier, but this was not done. The demand notes and receipts for rates during the twelve months preceding July 15th next before the election were made out in the mother's name, but the respondent paid the rates out of the profits of the inn. Before the publication of the lists next preceding the election, the respondent's name was inserted upon the burgess roll as joint occupier, his mother's name still remaining on the roll as joint occupier. Held, that the respondent was qualified by occupation and payment of rates, and was, therefore, "entitled to be enrolled as a burgess" within the meaning of the Municipal Corporations Act, 1882, s. 11, sub-s. (2) (a), and was duly elected. *Unwin* v. *McMullen*, [1891] 1 Q. B. 694 ; 60 L. J. Q. B. 400 ; 39 W. R. 712 ; 55 J. P. 582 ; 7 T. L. R. 450.

It is sufficient to entitle a person to be nominated for the office of councillor that, if otherwise duly qualified, he is enrolled in the burgess roll at the time of the election, though his name may not be upon the burgess roll which was in force at the time of his nomination. *Budge* v. *Andrews*, 3 C. P. D. 510 ; 47 L. J. C. P. 586 ; 39 L. T. (N.S.) 166.

(*c*) The separate non-resident list is made out under s. 49, *post*. In a borough, in order that a person may be entitled to be placed on that list, he must be duly qualified to be a burgess in all respects save that of residence, and he must reside within fifteen miles of the borough.

A similar list is to be made for a county. It is provided by the Local Government Act, s. 76, sub-s. (12), *ante*, that the above section shall include, for the purposes of that Act, all persons entered in such separate list for any municipal borough by reason of occupation of property in the borough, and all persons entered in such separate list for any part of a county not in a municipal borough by reason of the occupation of property in that part.

By the County Electors Act, 1888, s. 12, a list of persons occupying property in a county and residing within fifteen miles, but more than seven miles from the county, shall be made out in accordance with s. 49 of the Municipal Corporations Act, 1882. But by the Local Government Act, 1888, s. 76, sub-s. (6), it is provided that nothing in that section shall apply to any person occupying property within a borough. See the several sections and the notes to them in this work.

(*d*) In applying this section to county electors this phrase must be read, "in the case of a county having four or more electoral divisions." See the Local Government Act, s. 2, *ante*, p. 3.

(*e*) This means rateable value. *Baker* v. *Marsh*, 4 E. & B. 144 ; 24 L. J. Q. B. 1 ; 1 Jur. (N.S.) 44 ; 3 W. R. 13 ; 19 J. P. 117. The poor rate in the

Sect. 11 (4). case of county electors may, apparently, be the poor rate of any parish in the county. But the real or personal estate need not be within the county.

NOTE.

(*f*) The words "qualified to elect" in this proviso are not equivalent to "entitled to vote." Therefore a person who, though not qualified to be a burgess, had been enrolled on the burgess roll, and was, therefore, entitled to vote under s. 51, *post*, was not qualified to be a councillor under this proviso. *Flintham* v. *Roxburgh*, 17 Q. B. D. 44 ; 55 L. J. Q. B. 472 ; 54 L. T. (N.S.) 797 ; 34 W. R. 543 ; 50 J. P. 311. So also it was held that a woman was not qualified to be a county councillor under this sub-section. *Beresford-Hope* v. *Sandhurst*, 23 Q. B. D. 79 ; 58 L. J. Q. B. 316 ; 61 L. T. (N.S.) 150 ; 37 W. R. 548 ; 53 J. P. 805 ; *De Souza* v. *Cobden*, [1891] 1 Q. B. 687 ; 60 L. J. Q. B. 533 ; 65 L. T. (N.S.) 130 ; 39 W. R. 454 ; 55 J. P. 565 ; 7 T. L. R. 441.

Note that this qualification need only exist at the time of election. The subsequent loss of the qualification to elect will not affect the right to sit and act as councillor so long as the councillor resides in the county as required by the next sub-section.

Disqualifications for being councillor.

12.—(1.) A person shall be disqualified (*a*) for being elected and for being a councillor, if and while he—

(a.) Is an elective auditor (*b*) or a revising assessor (*c*), or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council (*d*) ; or

(b.) Is in holy orders, or the regular minister of a dissenting congregation (*e*) ; or

(c.) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council (*f*) :

(2.) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

(a.) Any lease, sale, or purchase of land, or any agreement for the same (*g*) ; or

(b.) Any agreement for the loan of money, or any security for the payment of money only (*h*) ; or

(c.) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted ; or

(d.) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough (*i*) ; or

(e.) Any railway company, or any company incorporated by Act of Parliament or Royal Charter, or under the Companies Act, 1862.

25 & 26 Vict. c. 89.

(*a*) These are not the only disqualifications for being councillor. Other disqualifications arise under the Corrupt Practices Acts (46 & 47 Vict. c. 51), ss. 6, 10 ; 47 & 48 Vict. c. 70, ss. 2, 7 ; the Felony Act (33 & 34 Vict. c. 23), s. 2 ; the Bankruptcy Act (46 & 47 Vict. c. 52), s. 32, as amended by the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 9 ; the Public Bodies (Corrupt Practices) Act, 1889 (52 & 53 Vict. c. 69), s. 2. A woman cannot be elected.

Sect. 12 (2)

NOTE.

See s. 63, *post*, and the notes thereto. A county coroner may not be a member of the council of his county. See the Local Government Act, s. 5, *ante*, p. 15.

By the Army Act, 1881 (44 & 45 Vict. c. 58), s. 146, officers of the regular forces were disqualified for holding office in any municipal corporation; but that section is to be read as containing the proviso "that nothing in this section shall disqualify any officer for election to or being a member of a county council." Army (Annual) Act, 1891 (54 Vict. c. 5), s. 8.

(*b*) See s. 25, *post*.

(*c*) Revising assessors will no longer be elected. See s. 29, *post*, and the County Electors Act, 1888, s. 4.

(*d*) This provision disqualifies the clerk, treasurer, and other officers of the council. But it is submitted that it does not disqualify the mayor's auditor, who must, under s. 25, be a member of the council, though he may receive remuneration for his services under this Act, or under the Public Health Act, 1875, s. 246.

By the County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 6, *post*, it is declared that a person shall not be disqualified nor be deemed ever to have been disqualified under s. 12 of the Municipal Corporations Act for being a member of a county council by reason only of his being appointed returning officer by that council, except where he has directly or indirectly by himself or his partner received any profit or remuneration in respect of such appointment.

(*e*) This will not apply to county councillors. See the Local Government Act, s. 2, *ante*, p. 2. It will still apply to borough councillors. It has been held that a person appointed to officiate occasionally or temporarily to a dissenting congregation is not disqualified. *R.* v. *Oldham*, L. R. 4 Q. B. 290; 38 L. J. Q. B. 125.

(*f*) The following cases decided with reference to the Act of 1835, and to similar provisions in other Acts, may be referred to as illustrating the meaning of the text:—

A trustee of a turnpike road let his horse and cart at a certain sum to a contractor for works on a road, to be used in the performance of the works. It was held that he was liable to a penalty as being interested in a contract with the turnpike trustees. *Towsey* v. *White*, 5 B. & C. 125.

A contract entered into with a person as trustee for a councillor is within the provision in the text. *Simpson* v. *Ready*, 12 M. & W. 736; 13 L. J. Ex. 193.

The text applies to a contract with the council under which a councillor has been employed and has acted, though the contract is one which should be sealed, and it is not sealed. Where such a contract arises, the disqualification arises *de die in diem*. *R.* v. *Francis*, 18 Q. B. 526; 21 L. J. Q. B. 304; 16 Jur. 1046.

An alderman of a borough sold some iron to a party who had contracted to supply the corporation with iron railings, and who purchased the iron for the purpose of performing his contract. It was held that the alderman had not an interest in a contract with the council. *Le Feuvre* v. *Lankester*, 3 E. & B. 530; 23 L. J. Q. B. 254; 18 Jur. 894; 18 J. P. 198; but see *Tomkins* v. *Joliffe*, *infra*.

A single bargain—as if the council bought a brush in a shop—would not disqualify the seller, though the price had not been paid. *Per* ALDERSON and BRAMWELL, BB., in *Woolley* v. *Kay*, 1 H. R. 307; 25 L. J. Ex. 351; 20 J. P. 776; but see *Lewis* v. *Carr*, *infra*.

An invoice addressed to town commissioners for several separate quantities of lime supplied at different times during four months was held to be sufficient

Sect. 12 (2). evidence of interest in a contract with the commissioners. *Nicholson* v. *Field*, 7 H. & N. 810 ; 31 L. J. Ex. 233 ; 10 W. R. 304.

Note.

A person who had entered into a contract with the Corporation of Dublin was held disqualified to be elected a member of that corporation, though he had before the election, but without the privity of the corporation, assigned his contract to a third person.. *R.* v. *Franklin*, 6 Ir. Rep. C. L. 239.

The disqualification applies only during the continuance of the contract, so that a councillor does not, by becoming interested in a contract, cease to be qualified or become disqualified within the meaning of s. 41, so as to incur penalties for acting after the termination of the contract. *Lewis* v. *Carr*, 1 Ex. D. 484 ; 46 L. J. Ex. 314 ; 36 L. T. (N.S.) 44 ; 24 W. R. 940.

Where a member of a local board received payments from the board for work done for the surveyor of the board, the work consisting of the use of men and horses at intervals during two years, it was held that he was interested in a contract with the board. *Fletcher* v. *Hudson*, 7 Q. B. D. 611 ; 51 L. J. Q. B. 48 ; 46 L. T. (N.S.) 125 ; 30 W. R. 349 ; 46 J. P. 372.

The brother of the defendant entered into a contract with a metropolitan vestry, and in order to enable him to carry it out borrowed money of the defendant, who by way of security took an assignment of the contract. Afterwards the defendant was elected a member of the vestry. It was held that he was interested in a contract with the vestry. *Hunnings* v. *Williamson*, 11 Q. B. D. 533 ; 52 L. J. Q. B. 416 ; 49 L. T. (N.S.) 361 ; 32 W. R. 267 ; 48 J. P. 132.

C. contracted with a local board to make certain alterations to gas fittings in a town hall. C. employed the defendant, who was a member of the board and a builder, to erect scaffolding for the purpose of enabling him to effect the alterations. It was held by FIELD, J., that the defendant was interested in a contract with the board. *Tomkins* v. *Jolliffe*, 51 J. P. 247.

By the terms of contracts entered into with a local authority, the surveyor was to receive from the contractors, in respect of bills of quantities to be prepared by him, percentages on the amounts he should certify to be due to such contractors by the local authority : it was held that the surveyor was interested or concerned in the contracts. And where he was employed, apart from his ordinary duties, to superintend the construction of certain drainage works as engineer of the local authority, who were to remunerate him by a percentage on the outlay, it was held that he was interested in the contract for the work. *Whiteley* v. *Barley*, 21 Q. B. D. 154 ; 54 L. J. Q. B. 643 ; 36 W. R. 823 ; 52 J. P. 595.

The defendant, a member of a local board, was employed by persons with whom the board had contracted for the performance of certain works on the premises and the board to do portions of the works so contracted for. It was held that the defendant had been concerned in contracts entered into by the board within the meaning of the above rule. LOPES, L.J., said : "I express no opinion with regard to such very trifling matters as were suggested in the argument, *e.g.*, the purchase of a paint brush or a few nails from a member of the board. It may be that the maxim *de minimis non curat lex* would be applicable in such cases." *Nutton* v. *Wilson*, 22 Q. B. D. 744 ; 58 L. J. Q. B. 443 ; 37 W. R. 522 ; 53 J. P. 644 ; 5 T. L. R. 439. But see as to similar trifling matters, *Nell* v. *Longbottom*, *infra*. A. and his partner, S., were under contract and bound to repair roads and do other works for a borough council. In October, A. dissolved the partnership and made over the contracts to S. In November, A. was elected councillor. It was held that A. was disqualified on the ground that he remained liable under his contracts. The petitioner had published a notice before the election to the effect that A.

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was disqualified by reason of the contracts with the council, and the question was publicly discussed in the ward. *Held*, that votes given for A., whose disqualification was notorious, were thrown away, and that the petitioner who had the next highest number of votes must be declared elected. *Cox* v. *Ambrose*, 55 J. P. 23; 60 L. J. Q. B. 114; 7 T. L. R. 59.

The interest in the contract continues so long as the contract itself exists. This may be important in considering whether an action for penalties has been brought in time. See *Todd* v. *Robinson*, 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. (N.S.) 120; 49 J. P. 278. As to the liability of a member for contracts entered into without his knowledge or against his orders, see *Miles* v. *McIlwraith*, 8 App. Cas. 120; 31 W. R. 591; 48 L. T. (N.S.) 689; 52 L. J. M. C. 17.

It appears from the decision in *Mellis* v. *Shirley Local Board*, 16 Q. B. D. 446; 55 L. J. Q. B. 143; 53 L. T. (N.S.) 810; 34 W. R. 187; 50 J. P. 214, that a contract between a local board and a member is altogether void and cannot be enforced. But the case does not decide whether the contract would be void if the member became interested in it after it had been made. COTTON, L.J., seemed to be of opinion that it would not, though the member would be prohibited from taking any benefit under it.

(*g*) Under the Public Health Act, 1875, it has been held that a member of a local board is not disqualified by the lease to him of a sewage farm containing covenants on the part of the board to supply, and on his part to use, the sewage of the district. *R.* v. *Gaskarth*, 5 Q. B. D. 321; 49 L. J. Q. B. 409; 42 L. T. (N.S.) 688; 28 W. R. 596; 44 J. P. 507. The letting of a building for the purposes of a polling station for one day is within the exception in the text. *Nell* v. *Longbottom*, [1894] 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. (N.S.) 499.

The text would probably cover such cases as the letting of rooms or offices to the council. See *Burgess* v. *Clark*, 14 Q. B. D. 735; 33 W. R. 269; 59 J. P. 388.

(*h*) L. contracted with certain commissioners to supply a town with water. This contract not having been fully carried out, he gave it up by deed to the commissioners, they agreeing to pay him a certain balance if they abandoned the works or completed them, and obtained a specific quantity of water. The deed contained releases by L., and covenants by L., not to molest the commissioners, etc. The works remained incomplete, but not abandoned. It was held that the deed was only a security for a sum of money. *Le Feuvre* v. *Lankester*, *supra*.

(*i*) But for this provision a councillor could not have held shares in a gas or water company contracting with the council. See *Todd* v. *Robinson*, 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. (N.S.) 120; 49 J. P. 278.

Another exception to the disqualification by interest in a contract is created by the Highways and Bridges Act, 1891 (54 & 55 Vict. c. 63), s. 5, *post*, which provides that no person shall be disqualified for being elected or for being a member of a county council by reason only of his having any share or interest in any contract with such county council for the supply from land of which he is owner or occupier of stone, gravel, or other material for making or repairing highways or bridges. Provided always that no such share or interest in any contract shall exceed the amount of 50*l.* in any one year.

Term of office and rotation of councillors.

13.—(1.) The term of office of a councillor shall be three years.

(2.) On the ordinary day of election of councillors in every year one-third of the whole number of councillors for the borough or

Sect. 13 (2). for the ward, as the case may be, shall go out of office, and their places shall be filled by election.

Note.

(3.) The third to go out shall be the councillors who have been longest in office without re-election.

It is provided by the Local Government Act, s. 2, *ante*, p. 3, that county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election. The above section does not, therefore, apply to county councillors.

Number, term of office, and rotation of aldermen.

14.—(1.) The aldermen shall be fit persons elected by the council (*a*).

(2.) The number of aldermen shall be one-third of the number of councillors (*b*).

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4.) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor.

(5.) The term of office of an alderman shall be six years.

(6.) On the ordinary day of election of aldermen in every third year one-half of the whole number of aldermen, shall go out of office, and their places shall be filled by election (*c*).

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election.

(*a*) In a county council the aldermen are to be called county aldermen.

(*b*) In London the number is to be one-sixth. See the Local Government Act, s. 40, sub-s. (5), *ante*, p. 89.

(*c*) As to the election of aldermen, see s. 60, *post*. As to the election of an alderman to fill a casual vacancy, see s. 40, *post*. The ordinary day of election of aldermen in a borough is November 9th; but in a county it is March 16th, or such other day within ten days after the ordinary day of retirement of county councillors (*viz.* March 8th), as the county council may from time to time fix for their county. Local Government (Election) Act (54 & 55 Vict. c. 68), s. 1 (3), *post*.

It was decided in *R.* v. *Coaks*, 3 E. & B. 251; 23 L. J. Q. B. 134, that an alderman was not qualified to be elected councillor; some doubt was thrown upon this by the Court of Appeal in *R.* v. *Bangor* (*Mayor, etc., of*), 18 Q. B. D. 349, but no opinion was expressed on the point by the House of Lords in the same case. *Pritchard* v. *Bangor* (*Mayor, etc., of*), 13 App. Cas. 241; 57 L. J. Q. B. 313; 58 L. T. (N.S.) 502; 37 W. R. 103; 52 J. P. 564.

Qualification, term of office, salary, procedure and powers of mayor.

15.—(1.) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such.

(2.) An outgoing alderman is eligible.

(3.) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration.

(4.) He may receive such remuneration as the council think reasonable.

(5.) He shall, subject to the provisions of this Act respecting justices, have precedence in all places in the borough.

(6.) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835, shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by that Act, or have not been altered or annulled by any subsequent Act.

In a county council the chairman may be elected from within or without the council. His term of office is one year, and apparently the text requires him to remain in office until his successor has made the declaration. (See Sched. 8, *post.*) He is a justice by virtue of his office. See the Local Government Act, s. 2 (5), *ante*, p. 4.

As to the remuneration of the mayor or the chairman of a county council, see *Att.-Gen.* v. *Blackburn* (*Corporation of*), 57 L. T. (N.S.) 385. In that case a corporation voted a sum of money to the mayor by way of remuneration, at the same time resolving that the mayor should be requested to take such steps as he might deem proper for the due celebration of Her Majesty's Jubilee. Some of the burgesses moved to restrain the corporation from applying any part of the borough fund for this purpose, but it was held that the provisions of the Act had not been contravened, and an interlocutory injunction was refused.

But it was held that a corporation were not entitled to make a colourable addition to the remuneration of the mayor merely that the addition might be applied in indirectly making payments such as subsidies to a college which would not be justified if made directly. *Att.-Gen.* v. *Cardiff* (*Mayor, etc., of*), [1894] 2 Ch. 337; 63 L. J. Ch. 557; 70 L. T. (N.S.) 591; 10 T. L. R. 420.

Sub-section (5) is not to apply to the chairman of a county council. See the Local Government Act, s. 75, sub-s. (16) (*b*), *ante*, p. 145.

Sub-section (6) of the above section has no application to the chairman of a county council.

Power of mayor to appoint deputy.

16.—(1.) The mayor may from time to time appoint an alderman or councillor to act as deputy mayor during the illness or absence of the mayor.

(2.) The appointment shall be signified to the council in writing and be recorded in their minutes.

(3.) A deputy mayor may, while acting as such, do all acts which the mayor as such might do, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, unless he is a justice, act as a justice, or in any judicial capacity.

This section does not apply to county councils, having regard to the Local Government Act, s. 75, sub-s. (16) (*b*). Section 2 (6) of that Act, *ante*, p. 4, enables the council to appoint a vice-chairman. See also s. 88 of that Act as to the deputy chairman in London.

Sect. 17 (1). *Officers of Council.*

The town clerk and deputy.

17.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the town clerk of the borough.

(2.) The town clerk shall hold office during the pleasure of the council.

(3.) He shall have the charge and custody of, and be responsible for, the charters, deeds, records, and documents of the borough, and they shall be kept as the council direct.

(4.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(5.) In case of the illness or absence of the town clerk, the council may appoint a deputy town clerk, to hold office during their pleasure.

(6.) All things required or authorized by law to be done by or to the town clerk may be done by or to the deputy town clerk.

The officer of a county council corresponding to the town clerk is the clerk of the council, who in all counties, except London, will also be the clerk of the peace. The appointment of the clerk of the council and the deputy clerk, and their duties, are regulated by the Local Government Act, 1888, s. 83, *ante*, p. 158.

By the Local Government Act, s. 75 (16) (*e*), *ante*, p. 145, it is provided that nothing in the above section shall apply to the county council.

The treasurer

18.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the treasurer of the borough.

(2.) The treasurer shall hold office during the pleasure of the council.

(3.) A vacancy in the office shall be filled within twenty-one days after its occurrence,

(4.) The offices of town clerk and treasurer shall not be held by the same person.

The Local Government Act, s. 75, *ante*, p. 145, provides that this section shall not apply to a county council unless that council so resolve ; but if the county council so resolve, the above section is to supersede the existing enactments with respect to the county treasurer.

Other borough officers.

19. The council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed.

In applying this section to a county council, the provisions of the Local Government Act, ss. 118, 119, *ante*, pp. 190—195, as to existing officers and compensation, must be borne in mind. By s. 120, if the county council abolish the office of any existing officer, they must pay him compensation.

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Security by and remuneration of officers.

20. The council shall require every officer appointed by them to give such security as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable.

It is provided by the Local Government Act, s. 119, *ante*, p. 194, that existing officers, *i.e.*, officers transferred to the county councils under that Act, shall hold their offices by the same tenure, and upon the same terms and conditions, as if that Act had not passed. The above section, in so far as it applies to security, will not apply to an existing officer who has not hitherto given security. But upon new appointments to any offices security must be taken, the amount and nature of the security being in the discretion of the county council.

Accountability of officers.

21.—(1.) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act in connection with his office, showing the amount due from each.

(2.) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3.) If any such officer—

(a.) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

(b.) After three days' notice in writing, signed by the town clerk or by three members of the council, given or left at his usual or last known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document which he ought so to deliver, or to give satisfaction respecting it to the council, or as they direct;

a court of summary jurisdiction having jurisdiction where the officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction.

(4.) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause.

This section will apply to officers of the county council.

The expression "court of summary jurisdiction" is defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13 to mean any justice or justices of the peace or other magistrate by whatever name called, to whom jurisdiction is given by or who is authorized to act under the Summary Jurisdiction Acts, and whether acting under those Acts or under any other Act or by virtue of his commission or under the common law.

Sect. 22. *Meetings and Proceedings of Council; Committees.*

Quarterly and other meetings of council, appointment of committees, minutes, etc.

22.—(1.) The rules in the Second Schedule shall be observed (*a*).

(2.) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit, for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees (*b*); but the acts of every such committee shall be submitted to the council for their approval (*c*).

(3.) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest (*d*).

(4.) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body.

(5.) A minute of proceedings at a meeting of the council, or of a committee, signed at the same or the next ensuing meeting by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof (*e*).

(6.) Until the contrary is proved, every meeting of the council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

(*a*) See this schedule, *post*.

(*b*) This provision will apply to county councils. As to the appointment of joint committees by county councils or quarter sessions, see the Local Government Act, s. 81, *ante*, p. 155, and as to the proceedings of such committee, see s. 82. As to the standing joint committee, see s. 30, *ante*, p. 66.

By the Local Government Act, s. 28, *ante*, p. 64, the county council shall have power to delegate, with or without any restrictions or conditions, as they may think fit, any powers or duties transferred to them by that Act, to any committee, except the power of raising money by rate or loan.

The delegation of powers to a committee will not deprive a county council of the right to exercise any power which the committee might have exercised under the delegation. *Huth* v. *Clarke*, 25 Q. B. D. 391; 59 L. J. M. C. 120; 63 L. T. (N.S.) 348; 38 W. R. 655; 6 T. L. R. 373.

(*c*) The acts and proceedings of the standing joint committee need not be submitted to the county council for their approval. (Local Government Act, s. 75 (16) (*f*), *ante*, p. 146.) Every committee of a county council is required

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to report its proceedings to the council, but to the extent to which the council so direct the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act, 1882, to be submitted to the council for their approval. (Local Government Act, s. 82, *ante*, p. 157). It seems that the act of the committee will not be invalid merely because the approval of the council (where necessary) is not given until after the act has been done. *Firth* v. *Staines*, 13 T. L. R. 394.

(*d*) Where, by a resolution of a town council under s. 15 (4), *ante*, a salary is attached to the office of mayor, a candidate for that office is disqualified under the provision in the text from voting for himself, as he has a pecuniary interest in the matter. *Nell* v. *Longbottom*, [1894] 1 Q. B. 767; 63 L. J. Q. B. 490; 70 L. T. (N.S.) 499. It has already been pointed out that a member of the council is disqualified by any interest in a contract with the council. (See s. 12, *ante*, p. 252.) But there are certain excepted interests which do not disqualify, and the provisions in the text will apply to these.

(*e*) As to the taking and signing of the minutes, see Sched. 2, r. 12, *post*.

Bye-laws (*a*).

Power of council to make bye-laws.

23.—(1.) The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances (*b*) not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

(2.) Such a bye-law shall not be made unless at least two-thirds of the whole number of the council are present.

(3.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall.

(4.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of Her Privy Council, disallows the bye-law or part thereof, the bye-law or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time.

(5.) Any offence against such a bye-law may be prosecuted summarily (*c*).

(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal

38 & 39 Vict. c. 55.

Sect. 23 (6). Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances(*d*).

(*a*) As to the application of this section to county councils, see the Local Government Act, 1888, s. 16, and notes, *ante*, p. 42.

By s. 85 of the same Act, *ante*, p. 162, the provisions of sub-s. (1) of this section, in so far as it gives power to a council (whether town council or county council) to make bye-laws regulating the use of bicycles and tricycles, are repealed.

(*b*) It will be observed that the bye-laws are of two kinds, one for the good rule and government of the borough, and one for the suppression of nuisances. The distinction is important, for, as noted below, the two kinds are differently confirmed.

The leading case on the subject of the reasonableness of these bye-laws, is *Kruse* v. *Johnson*, 14 T. L. R. 416 ; 42 Sol. J. 509, W. N. (1898), 48, in which it was held by Lord RUSSELL OF KILLOWEN, C.J., Sir FRANCIS JEUNE, P., and WRIGHT, DARLING and CHANNELL, JJ. (MATHEW, J., dissenting), that the bye-law of a county council that "no person shall sound or play upon any musical or noisy instrument or sing in any public place or highway within 50 yards of any dwelling-house after being requested by any constable or by an inmate of such house personally, or by his or her servant, to desist," was reasonable, and general principles were laid down as to the validity of bye-laws made by a local representative body. The cases noted below must be considered in the light of this decision.

A bye-law made under this section provided that "every person who shall sound, or play upon any musical instrument, or sing or make any noise in any street, or near any house after having been required by any householder resident in such street or by any police constable to desist, either on account of any illness of any inmate of such house or for any reasonable cause." A captain in the Salvation Army was convicted under this bye-law for playing a concertina on a Sunday morning, surrounded by a large crowd, after a constable had required him to desist, telling him that he had reasonable cause for so doing, as several complaints had been made by the inhabitants. *Held*, that the bye-law was reasonable, and that it was for the justices to decide whether there was reasonable cause. *R.* v. *Powell*, 51 L. T. (N.S.) 92 ; 48 J. P. 740.

A bye-law that no person, not being a member of Her Majesty's army or auxiliary forces, acting under the orders of his commanding officer, shall sound or play upon any musical instrument in any of the streets of the borough on Sunday, was held unreasonable and *ultra vires*. *Johnson* v. *Croydon* (*Mayor of*), 16 Q. B. D. 708 ; 55 L. J. M. C. 117 ; 54 L. T. (N.S.) 295 ; 50 J. P. 487 ; so also a bye-law that every person who in any street should sound or play upon any musical or noisy instrument, or should sing, recite, or preach in any street without having previously obtained a licence in writing from the mayor, and every person who having obtained such licence should fail to observe, or should act contrary to any of the conditions of such licence, should forfeit a sum not exceeding 20*s*. *Munro* v. *Watson*, 57 L. T. (N.S.) 366 ; 51 J. P. 660.

A bye-law which forbade the keeping of swine within a borough was held bad. *Everett* v. *Grapes*, 3 L. T. (N.S.) 669 ; 25 J. P. 644. So also a bye-law that parents should be liable to a penalty if they suffered a child to sell articles in the street after a certain hour. *Macdonald* v. *Lochrane*, 51 J. P. 629.

A bye-law that no person should erect any booth for the purpose of any show or public entertainment in any place within a borough without licence from the mayor, which licence should only be given during the annual fair time, if any three inhabitants objected, was held void. *Elwood* v. *Bullock*, 6 Q. B. 383 ; 13 L. J. Q. B. 330 ; 8 Jur. 1044.

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The following borough bye-law was held valid: "If any butcher or dealer in meat, or any fishmonger, poulterer, or other person, shall expose or offer for sale on his premises, or have in his possession with intent to sell or to expose for sale, any meat, fish, poultry, or other victuals or provisions unfit for the food of man, he shall be subject to a penalty, to be recovered before two justices, who shall decide on the unfitness." *Shillito* v. *Thompson*, 1 Q. B. D. 12; 45 L. J. Q. B. 18; 33 L. T. (N.S.) 506; 24 W. R. 57.

One of the Salvation Army used a concertina in a street of a borough, a bye-law of which, made under 5 & 6 Will. 4, c. 74, prohibited the use of any noisy instrument to the annoyance of any of the inhabitants. The justices found it was a noisy instrument, and some inhabitants proved being annoyed. *Held*, there was evidence to support a conviction; that it was not necessary to prove that the instrument was a public nuisance to all the inhabitants, and that the bye-law was not *ultra vires*. *Booth* v. *Howell*, 53 J. P. 678; 5 T. L. R. 449.

In a prosecution under a bye-law of a town providing that any person making a violent noise in the streets to the annoyance of the inhabitants shall be guilty of an offence, it is sufficient to prove that one inhabitant has been annoyed. *Innes* v. *Newman*, [1894] 2 Q. B. 292; 63 L. J. M. C. 198; 70 L. T. (N.S.) 689; 42 W. R. 573; 58 J. P. 543.

A Local Improvement Act authorized conservators of a common to make bye-laws and regulations for the prevention of, and protection from, nuisances, and for keeping order. The appellant was charged for placing on the common a boat-van for pleasure without licence and without payment of the prescribed fee, contrary to a bye-law made. *Held*, that the bye-law was not *ultra vires* merely because it prohibited vans without leave, and because it did not confine this to such as were nuisances. *Nash* v. *Manning*, 58 J. P. 718.

A bye-law made by a county council under s. 16 of the Local Government Act, 1888, was in the following terms: "No person shall in any street or public place, or on land adjacent thereto, sing or recite any profane or obscene song or ballad, or use any profane or obscene language." *Held*, that the bye-law was invalid, since even if the words "or on land adjacent thereto," which were clearly too wide, were struck out, it was still unreasonable, because it did not contain any words importing that the acts must be done so as to cause annoyance. *Strickland* v. *Hayes*, [1896] 1 Q. B. 290; 65 L. J. M. C. 55; 74 L. T. (N.S.) 137; 44 W. R. 398; 60 J. P. 164. In a later case, however, a defendant was charged with using indecent and obscene language in a dwelling-house, in a room abutting on and then open to the public street, to the annoyance of persons in the street, contrary to a bye-law of the county council. It was held that the bye-law was valid. *Mantle* v. *Jordan*, [1897] 1 Q. B. 248; 66 L. J. Q. B. 224; 75 L. T. (N.S.) 552; 61 J. P. 119; 13 T. L. R. 121.

A bye-law made under this section prohibited, under a penalty, any person from frequenting and using any street or other public place within the borough, for the purpose of bookmaking or betting. *Held*, that the bye-law was one which could properly be made for the good rule and government of the borough, and was therefore valid. *Burnett* v. *Berry*, [1896] 1 Q. B. 641; 65 L. J. M. C. 118; 74 L. T. (N.S.) 494; 44 W. R. 512; 60 J. P. 375; 12 T. L. R. 362. As to the evidence in a charge under such a bye-law, see *Whickham* v. *Ashe*, *Times*, January 16th, 1897.

A bye-law of a county council provided as follows: "A person shall not, together with any other person or persons, assemble in any street or public place for the purpose of betting." This bye-law was held valid. *Godwin* v. *Walker*, 60 J. P. 308; 12 T. L. R. 367.

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A bye-law made by the county council of Warwickshire, under s. 16 of the Local Government Act, 1888, was as follows: "Lights on vehicles. A person driving or having charge of any vehicle . . . shall from the end of the first hour after sunset to two o'clock a.m., except during such part (if any) of that period as shall be between the rising and the setting of the moon, carry attached to such vehicle a lighted lamp or lighted lamps, which shall be so constructed or placed as to exhibit a light in the direction in which he is proceeding, and so as to prove adequate means of signalling the approach or position of the vehicle . . . Provided also that where such vehicle is carrying timber, such person shall also carry attached at the end thereof a lamp or lamps so constructed as to exhibit a light or lights visible to persons overtaking such vehicle." The respondent, a carter, was summoned for driving a waggon laden with timber during the prohibited hours without proper lights, contrary to the bye-law. The charge was dismissed, on the ground that the bye-law was invalid as being unreasonable. *Held*, that the bye-law was valid. *Walker* v. *Stretton*, 44 W. R. 425; 60 J. P. 313; 12 T. L. R. 363.

A bye-law made by a county council provided that "no person shall drive, or cause to be driven, any timber carriage over any main road or other highway in the county between sunset and sunrise, unless it has lamps showing a bright and adequate light both to the front and rear of the carriage. *Held*, that the bye-law was reasonable, and therefore valid. *Williams* v. *Groves*, 12 T. L. R. 450.

By a bye-law made by the council of a municipal borough, purporting to act under s. 23 of the Municipal Corporations Act, 1882, it was provided that "no person shall, to the annoyance or disturbance of residents or passengers, keep or manage a shooting gallery, swing-boat, roundabout, or other like thing, in any street or public place, or on land adjoining or near to such street or public place, provided always that this bye-law shall not apply to any fair lawfully held." The respondent erected and kept two sets of swing-boats and roundabouts, worked by steam power, with organs attached, on private land near a public street, and not on the day of any lawful fair, to the annoyance of certain residents who lived near by, and were disturbed by the noise of the organs and the crowds attracted, as well by the respondent's erections as by other shows held at the same place and time. The borough justices dismissed an information against the respondents for a breach of the above bye-law, on the ground that it was *ultra vires*, and bad for extending to land adjoining or near to a street or public place. *Held*, that the bye-law was valid, and case remitted to the justices for conviction. *Teale* v. *Harris*, 61 J. P. 744.

A bye-law of the borough of C. provided: "No person shall in the following streets (certain streets were named), post, paste, or affix any bill, notice, or placard on any building, wall, fence, gate, door, pillar, tree or post in or abutting on any street, between nine a.m. and six p.m., provided that notices of the effect of the foregoing bye-law shall be affixed and kept affixed in each of the above-mentioned streets. *Held*, that the bye-law was repugnant to the general law, and, therefore, *ultra vires* and bad. *R.* v. *Richards*, 61 J. P. 40.

A bye-law may be good in part. *R.* v. *Faversham*, 8 T. R. 352; *R.* v. *Lundie*, 31 L. J. M. C. 157; 8 Jur. (N.S.) 640; 5 L. T. (N.S.) 830; 10 W. R. 267.

A bye-law in restraint of trade is bad. *Hesketh* v. *Braddock*, 3 Burr. 1847; *Bodwick* v. *Fennell*, 1 Wils. 233; *Clark* v. *Le Cren*, 9 B. & C. 52; *Shaw* v. *Poynter*, 2 A. & E. 312. But a mere regulation not in restraint of trade, as that no person should slaughter animals within a city, is valid. *Pierce* v. *Bartrum*, Cowp. 269. And a bye-law prohibiting the sale of articles in a public recreation ground, except in places to be specified, was held valid in *Gray* v. *Sylvester*, 46 W. R. 63; 14 T. L. R. 12.

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As to the general doctrine that bye-laws must be reasonable, see *Slattery* v. *Naylor*, 13 App. Cas. 446; 57 L. J. P. C. 79; 59 L. T. (N.S.) 41; 36 W. R. 897; *Toronto Municipal Corporation* v. *Virgo*, [1896] A. C. 88; 65 L. J. P. C. 4; 73 L. T. (N.S.) 449.

(*c*) That is, in manner provided by the Summary Jurisdiction Acts. See s. 219, *post*. The council cannot summon offenders before them to answer complaints for offences against the bye-laws. *In re Wiseman*, 3 T. L. R. 12; and see the Local Government Act, s. 78, *ante*, p.

(*d*) Section 187 of the Public Health Act, 1875, is as follows:—

"Bye-laws made by the council of any borough under the provisions of s. 90 of the Act of the 6th year of King William the 4th, c. 76, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act." The meaning of this provision, read with the text, is that while bye-laws relating to the good government of a borough are confirmed by a Secretary of State, and may be disallowed by the Queen in Council as provided by sub-s. (4), *supra*, bye-laws for the prevention and suppression of the nuisances mentioned in sub-s. (1) must be made in manner provided by the Public Health Act, 1875, and must be confirmed by the Local Government Board under s. 184 of that Act. The Local Government Act, s. 16, *ante*, p. 42, which enables a county council to make bye-laws under the above section, provides that s. 187 of the Public Health Act, 1875, shall apply to such bye-laws. Consequently, any bye-laws made by a county council for the suppression and prevention of nuisances within the county must be made and confirmed in manner provided by the Public Health Act. But bye-laws for the good government of the county other than those relating to nuisances do not require the confirmation of the Local Government Board; the approval of a Secretary of State is sufficient. See the note, *ante*, pp. 42—43.

Evidence of bye-laws.

24. The production of a written copy of a bye-law made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the bye-law.

In the case of bye-laws for the prevention of nuisances, a copy certified by the clerk under s. 186 of the Public Health Act, 1875, will be sufficient evidence; see *ante*, pp. 42—44. But having regard to the provisions in the text it seems desirable that a copy of any bye-laws to be tendered as evidence should be authenticated by the seal of the county council.

The word "written" includes "printed." See s. 20 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

Accounts and Audit.

The borough auditors.

25.—(1.) There shall be three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the mayor, called mayor's auditor(*a*).

Sect. 25 (2).

(2.) An elective auditor must be qualified to be a councillor, but may not be a member of the council or the town clerk or the treasurer.

(3.) The mayor's auditor must be a member of the council.

(4.) The term of office of each auditor shall be one year.

(5.) The appointment of the mayor's auditor shall be made on the ordinary day of election of the elective auditors (*b*).

(6.) On a casual vacancy in his office an appointment to fill it shall be made within ten days after the occurrence of the vacancy (*c*).

(*a*) The above section will have no application to a county council, for by the Local Government Act, s. 71, *ante*, p. 136, the accounts of county councils are to be audited by the district auditors appointed by the Local Government Board. But in county boroughs the above section will still apply, for by the Local Government Act, s. 34, *ante*, p. 75, Part IV. of that Act relating to finance is not to apply to county boroughs.

There is no provision in the Municipal Corporations Act, 1882, relating to the remuneration of the borough auditors. But by the Public Health Act, 1885, s. 246, the borough auditors may be paid at a rate not exceeding three guineas a day for auditing the accounts of the borough as urban sanitary authority.

(*b*) The ordinary day for the election of borough auditors is March 1st, or such other day as the council, with the approval of the Local Government Board, from time to time appoint. See s. 62, *post*.

(*c*) As to the filling of casual vacancies, see ss. 40 and 66, *post*.

Half-yearly accounts of treasurer.

26. The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act.

The Local Government Act, s. 71, *ante*, p. 136, provides that the provisions of the Municipal Corporations Act, 1882, with respect to the accounts of the treasurer of a borough shall apply to the accounts of a county council.

The same section provides that the accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year as defined by that Act, and shall be in the form for the time being prescribed by the Local Government Board. The local financial year is defined by s. 73, *ante*, p. 140. It will be observed that the accounts of county councils are to be made out yearly, not half-yearly.

The above section will, however, continue to apply to county boroughs without alteration.

By s. 233, *post*, the treasurer's accounts may be inspected by any member of the council.

Audit and publication of treasurer's accounts.

27.—(1.) The treasurer shall within one month from the date to which he is required to make up his accounts in each half year, submit them, with the necessary vouchers and papers, to the borough auditors, and they shall audit them.

(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year. Sect. 27 (2).

This section will apply to county boroughs without alteration. With regard to other county councils, the accounts are to be made out to the end of each financial year, and are to be audited by the district auditors. Save to this extent the section will apply to county councils, for by the Local Government Act, s. 71, *ante*, p. 136, the provisions of the Municipal Corporations Act, with respect to the accounts of the treasurer of a borough and the abstract thereof, are to apply to the accounts of the county council.

By s. 233, *post*, all the ratepayers are entitled to inspect the abstract and to obtain a copy on payment of a reasonable sum.

28.—(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year. Returns to Local Government Board.

(2.) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4.) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year.

(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds, to be recovered by action on behalf of the Crown in the High Court.

(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

The section will also apply to county councils with certain modifications. See s. 71 (2) of the Local Government Act, *ante*, p. 136. The clerk of the council must perform the duties of the town clerk ; see s. 75 (5) of that Act, *ante*, p. 142. The financial year ends on the 31st, not March 25th, *ib.* s. 73, *ante*, p. 140.

Revising Assessors.

29.—(1.) In every borough whereof no part of the area is co-extensive with or included in the area of a parliamentary borough, there shall be two revising assessors elected by the burgesses. Revising assessors in non-parliamentary boroughs.

(2.) Every person shall be eligible who is qualified to be a councillor and is not a member of the council or the town clerk or treasurer.

Sect. 29 (3).

(3.) The term of office of each revising assessor shall be one year.

(4.) Every revising assessor shall, as soon as conveniently may be after his election, and from time to time as occasion requires, appoint, by writing signed by him, a person eligible to the office of revising assessor, to be his deputy, to act for him in case of his illness or incapacity to act.

(5.) The appointment shall be signified to the council in writing, signed by the assessor, and be recorded in their minutes.

This section is practically repealed. The function of the revising assessors was to assist the mayor in revising the burgess lists in boroughs to which the 41 & 42 Vict. c. 26, did not apply. But by the County Electors Act, 1888 (51 Vict. c. 10), the 41 & 42 Vict. c. 26, is now applied to every municipal borough, and by s. 4, it is provided that revising assessors for such borough shall not be elected.

Division of Borough into Wards, or alteration of Wards.

Proceedings for division of borough into wards, or alteration of wards.

30.—(1.) If two-thirds of the council of a borough agree to petition, and the council thereupon petition, the Queen for the division of the borough into wards, or for the alteration of the number and boundaries of its wards, it shall be lawful for Her Majesty from time to time, by Order in Council, to fix the number of wards into which the borough shall be divided ; and the borough shall be divided into that number of wards.

(2.) Notice of the petition, and of the time when it pleases Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the London Gazette one month at least before the petition is so considered.

(3.) Where an Order in Council has been so made, the Secretary of State shall appoint a commissioner to prepare a scheme for determining the boundaries of the wards and apportioning the councillors among them.

(4.) In case of division into wards, the commissioner shall apportion all the councillors among the wards.

(5.) In case of alteration of wards, he shall so apportion among the altered wards the councillors for those wards as to provide for their continuing to represent as large a number as possible of their former constituents.

(6.) In either case, each councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.

(7.) In case of division into wards the returning officer at the first election for each ward held after the division shall, notwithstanding anything in this Act, be the mayor or a person appointed by the mayor.

(8.) If by reason of any division or alteration under this section any doubt arises as to which councillor should go out of office, the doubt may be determined by the council.

(9.) The division of a borough into a greater number of wards shall not affect the qualification of aldermen or councillors.

(10.) The number of councillors assigned to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

(11.) The commissioner shall make the scheme in duplicate, and shall deliver one of the duplicates to the town clerk, and shall send the other to the Secretary of State, to be submitted by him to Her Majesty in Council for approval.

(12.) The scheme shall be published in the London Gazette, and shall come into operation at the date of that publication, and thenceforth the boundaries of wards and apportionment of councillors determined and made by the scheme shall be observed and be in force.

(13.) If Her Majesty in Council does not approve the scheme as originally prepared by the commissioner, it shall nevertheless be published in the London Gazette, and shall be in force for the purposes of any municipal election until Her Majesty in Council, on further information and report from the commissioner, definitively approves a scheme in that behalf.

(14.) The commissioner may administer oaths, and may require any person having the custody of any book containing a poor rate made for a parish to produce the book for his inspection; and every person required by the commissioner to answer any question put to him for the purposes of this section shall answer it.

(15.) The commissioner shall have remuneration as appearing by the Fourth and Fifth Schedules.

A petition under this section may be presented upon a resolution passed by a majority of the whole council, and may pray for the alteration of the boundaries of the wards of a borough without any alteration of their number; and where any such petition prays for the alteration of boundaries only, the provisions of the said section shall apply so far as applicable. Where the powers conferred by this section have been exercised in pursuance of a petition by the council of any borough, a further petition from the council of the same borough shall not be presented before the expiration of seven years from the date of the previous Order in Council under this section, 56 Vict. c. 9, ss. 2, 3.

It is provided by the Local Government Act, s. 2, *ante*, p. 3, that the divisions of the county for the purpose of the election of county councillors shall be called electoral divisions, and not wards, and one county councillor only shall be elected for each electoral division. The same section further

Sect. 30. NOTE. provides that as respects the number of the county councillors, and the boundaries of the electoral divisions in every county—

(a) the number of the county councillors, and their apportionment between each of the boroughs which have sufficient population to return one councillor and the rest of the county, shall be such as the Local Government Board may determine ; and

(b) any borough returning one councillor only shall be an electoral division ; and

(c) in the rest of the county the electoral divisions shall be such as in the case of a borough returning more than one councillor the council of the borough, and in the rest of the county the quarter sessions for the county, may determine ;

subject in either case to the directions enacted by that Act ; and in the case of elections after the first, to any alterations made, in accordance with the said directions, in manner in this Act mentioned.

The directions here referred to are contained in s. 51, *ante*, p. 106, and future alterations of electoral divisions are to be effected in manner provided by s. 54, *ante*, p. 108.

It appears, therefore, that the above section will not apply to electoral divisions. It will, of course, continue to apply to the division of boroughs into wards.

Supplemental and Exceptional Provisions.

Occupation of part of house.

31. In and for the purposes of this Act—

(a.) The terms house, warehouse, counting-house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession ; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

(b.) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

See s. 9, *ante*, and the notes thereto.

It is provided by the County Electors Act, 1888 (51 Vict. c. 10), s. 2, sub-s. (2), that the above section shall extend to so much of every county as is not comprised within the limits of any municipal borough, for the purpose of the qualification of county electors.

But for the provision in the text, the tenant of offices or chambers might be in law only a lodger, and not an occupier within the meaning of s. 9. See note (*d*) to s. 9, *ante*, p. 241.

A. occupied two rooms in a house in which there were four other residents. The landlord did not live on the premises, but paid the rates. It was held that A. was entitled to the municipal franchise by reason of the provision in the text. *Greenway* v. *Batchelor*, 47 J. P. 792.

A house not structurally severed was let partly to one tenant and partly to another, and each had the exclusive occupation of the part let to him ; there

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was a staircase leading from the front door to the upper rooms and a joint use of the front garden and the backyard, in which was a closet. It was held that each was the occupier of a separate tenement capable of being rated. *Allchurch* v. *Hendon Union*, [1891] 2 Q. B. 436 ; 61 L. J. M. C. 27 ; 65 L. T. (N.S.) 450 ; 40 W. R. 84 ; 56 J. P. 117 ; 7 T. L. R. 634.

A cubicle in a dormitory in a police station, of which a policeman had the exclusive use, was held not to be "part of a house separately occupied as a dwelling," so as to confer the parliamentary franchise. *Clutterbuck* v. *Taylor*, [1896] 1 Q. B. 395 ; 65 L. J. Q. B. 314 ; 74 L. T. (N.S.) 177 ; 44 W. R. 531 ; 60 J. P. 273, following *Burnett* v. *Hickmott*, [1895] 1 Q. B. 691 ; 64 L. J. Q. B. 407 ; 72 L. T. (N.S.) 236 ; 43 W. R. 284 ; 59 J. P. 230.

Claim by occupier to be rated.

32.—(1.) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate.

(2.) If they fail to do so, he shall nevertheless, for the purposes of this Act, be deemed rated to that rate.

The 32 & 33 Vict. c. 41, s. 19, provides that the overseers in making out the poor rate shall in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers' column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for every qualification or franchise as aforesaid ; and if any overseer negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall for every such omission or misstatement be liable on summary conviction to a penalty not exceeding 2*l.* : Provided that any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating in the same manner as if his name had not been so omitted. This provision applies only in cases where the owner pays the rate, but in such cases it is of wider application than the text in that no claim to be rated is necessary. The text provides for all other cases of omission to be rated. See *Marsh* v. *Estcourt*, 24 Q. B. D. 147 ; 59 L. J. Q. B. 100 ; 38 W. R. 495 ; 54 J. P. 294 ; 1 Fox, 157. As an illustration of the effect of sub-s. (2) of the text, see *Unwin* v. *McMullen*, [1891] 1 Q. B. 694 ; 60 L. J. Q. B. 400 ; 39 W. R. 712 ; 55 J. P. 582 ; 7 T. L. R. 450.

Rules as to qualification of burgess on succession, etc.

33.(*a*)—(1.) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purposes of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor ; and rating in the name of the predecessor shall, until a new rate is made after the date of

Sect. 33 (1). succession, be equivalent to rating in the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

(2.) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish (*b*).

(3.) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4.) A person shall not be disentitled to be enrolled as a burgess by reason only—

(a.) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority; or

(b.) That his child has been admitted to and taught in any public or endowed school (*c*).

(*a*) The County Electors Act, 1888, s. 2, applies this section to county electors.

(*b*) But the property must be in the same county and outside the limits of a borough in order to qualify a county elector, just as in order to qualify a burgess it must be within the borough. See s. 2 of the County Electors Act.

(*c*) This forms an exception to s. 9, sub-s. (3), which disqualifies a person to be enrolled as a burgess if he has within the qualifying period received parochial relief or other alms. See note (*m*) to that section.

It is provided by the Elementary Education Act, 1876, s. 10, that the parent of a child whose fees are paid under that section shall not be deprived of any franchise, right, or privilege, and shall not be subject to any disability or disqualification.

Obligation to accept office or pay fine.

34.—(1.) Every qualified (*a*) person elected to a corporate office (*b*), unless exempt under this section or otherwise by law (*c*), either shall accept the office by making and subscribing the declaration required by this Act, within five days after notice of election (*d*), or shall in lieu thereof be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by bye-law determine.

(2.) If there is no bye-law determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor shall be twenty-five pounds, and in case of a mayor fifty pounds.

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(3.) The persons exempt under this section are—

(a.) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and

(b.) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election (*e*).

(4.) A fine payable under this section shall be recoverable summarily (*f*).

(*a*) In proceedings under this section there need not be express or actual evidence, but there must be some evidence of qualification, and if in fact the party was not qualified he is not liable to the penalty, and a conviction is invalid. *R.* v. *Stockton JJ.*, 11 W. R. 65; 26 J. P. 771.

(*b*) In a borough the term "corporate office" includes the office of mayor, alderman, councillor, and elective auditor. In a county it will include the chairman, county alderman, and councillors.

(*c*) There are exemptions under many statutes from the liability to serve in a corporate office. Thus officers of customs are exempt under 39 & 40 Vict. c. 36, s. 9; persons registered as dentists under 41 & 42 Vict. c. 33, s. 30; commissioners and officers of excise under 7 & 8 Geo. 4, c. 53, s. 11; inspectors of factories under 41 & 42 Vict. c. 16, s. 67; officers of inland revenue under 53 & 54 Vict. c. 21, s. 8; registered medical practitioners under 21 & 22 Vict. c. 90, s. 35; officers of the post office under 7 Will. 4 & 1 Vict. c. 33, s. 12; registrars of births under 7 Will. 4 & 1 Vict. c. 22, s. 18; men belonging to the army reserve under 45 & 46 Vict. c. 48, s. 7; officers in the army under s. 253, *post*; resident members of the university, see s. 257, *post*. To these must be added persons disqualified under the Corrupt Practices Acts, the Bankruptcy Acts, the Felony Act, etc., as to which see s. 12, note (*a*), *ante*, p. 252.

(*d*) The form of declaration is set out in Sched. 8. As to persons not accepting office by reason of refusal on conscientious grounds to make the declaration, see s. 36, *post*.

The declaration required by this section to be made by a person appointed to a corporate office in a county may be made at any time within three months after notice of the election, and may be made either in the manner prescribed by the Local Government Act, 1888, or before any justice of the peace or commissioners to administer oaths in the supreme court of judicature, 54 & 55 Vict. c. 68, s. 5, *post*.

(*e*) A further ground of exemption is that the person elected was nominated without his consent. See the Local Government Act, s. 75, 16 (*c*), *ante*, p. 145.

(*f*) That is to say, before a court of summary jurisdiction consisting of two or more justices sitting in open court. See the Summary Jurisdiction Act, 1879, ss. 20, 51.

35. A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the Declaration on acceptance of office.

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town clerk, a declaration as in the Eighth Schedule, act in the office except in administering that declaration.

It has been held that a councillor before whom this declaration is taken cannot be the relator in proceedings by way of *quo warranto* to avoid the office on the ground of disqualification. *R.* v. *Greene*, 2 Q. B. 460. The ground of this decision was that as a councillor need not act unless he chooses in taking the declaration, by acting he must be taken to concur in the irregularity. *Quære*, if this would prevent his presenting an election petition under s. 87, *post*.

In applying this section to county councillors, the clerk of the council must be substituted for the town clerk. As to the time and manner of making the declaration, see note (*d*) to s. 34, *supra*.

As to the penalty for acting without making this declaration, see s. 41, *post*.

Fine on resignation, etc.

36.—(1.) A person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof (*a*).

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant (*b*).

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office (*c*).

(*a*) But a person who has become disqualified, *e.g.*, by compounding with his creditors, under s. 39, cannot resign. *Hardwick* v. *Brown*, L. R. 8 C. P. 406 ; 28 L. T. (N.S.) 502 : 21 W. R. 639 : 37 J. P. 407 ; *R.* v. *Blizard*, *infra*.

If a person who is an alderman is elected a councillor, he vacates his office of alderman, but *quære*, whether he is liable to a fine under this section. See *R.* v. *Bangor* (*Mayor, etc., of*), 18 Q. B. D. 362, 366.

This point was not dealt with by the House of Lords in the same case *sub nom. Pritchard* v. *Bangor* (*Mayor, etc., of*), 13 App. Cas. 241.

If a man elected and admitted to an office discovers that for want of qualification or for any other sufficient reason he is not entitled to hold the office, and resigns it, a proceeding by *quo warranto* would not be necessary in order to vacate his office and so make way for a fresh election. But when the relator not only denies the validity of the election, but claims to be elected himself, he is entitled to the judgment of the court accordingly. *R.* v. *Blizard*, L. R. 2 Q. B. 55 ; 36 L. J. Q. B. 18 ; 15 L. T. (N.S.) 242 ; 15 W. R. 105 ; 31 J. P. 200 ; 7. B. & S. 922. This principle would be equally applicable to proceedings by way of election petition under s. 87, *post*.

As to the fine, see s. 34, *ante*, p. 272. The resignation is completed by the delivery of the writing and payment of the fine, and cannot afterwards be withdrawn. *R.* v. *Wigan* (*Mayor of*), 14 Q. B. D. 908 ; 54 L. J. Q. B. 338 ; 52 L. T. (N.S.) 435 ; 33 W. R. 547 ; 49 J. P. 327. The council are thereupon

bound to declare the office vacant. As to the necessity for this declaration in order to create a vacancy, see note to s. 39 (2), *post*. Sect. 36. NOTE.

(*b*) In a county the notice must be countersigned by the clerk of the council. As to the affixing of the notice, see s. 232, *post*. It would appear from that section that the notice may be posted in a conspicuous place in the electoral division to which the notice relates.

(*c*) No oath is required to be taken as a condition of holding a municipal office. See 31 & 32 Vict. c. 72.

37. A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible. Re-eligibility of office holders.

See *Futcher* v. *Saunders*, cited in the note to s. 39, *post*.

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years. Mayor and aldermen to continue members of council.

In applying this section to county councils the chairman must be substituted for the mayor. By the Local Government Act, s. 2, the term of office of the chairman is one year.

39. (1.) If the mayor, or an alderman or councillor— Avoidance of office by bankruptcy or absence.

(a.) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise (*a*) ; or

(b.) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months (*b*) :

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2.) In any such event the council shall forthwith declare the office to be vacant, and signify the same by notice, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant (*c*).

(3.) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as regards subsequent elections, shall, in case of bankruptcy, cease on his obtaining his order of discharge, and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge (*d*).

(4.) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office,

Sect. 39 (4). recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return (*e*).

(*a*) Where an alderman made a composition with his creditors, but not by deed, it was held that as the proceedings were not under the Bankruptcy Act, he was not disqualified, and the court granted an injunction restraining the council from holding a meeting declaring the office void. *Aslatt* v. *Southampton* (*Corporation of*), 16 Ch. D. 243 ; 50 L. J. Ch. 31 ; 43 L. T. (N.S.) 464.

S. served as councillor for the St. T. Ward from 1877 to July 21st, 1880, when he left at the office of the town clerk a notice of resignation addressed to the mayor and council. No action was taken thereon by the council, and no fine paid or tendered by S. S. did not sit in council or vote after the date of the notice. On the following day S. filed a petition for liquidation. In August a composition was accepted by the creditors of S. S. did not pay his debts in full. At an election of town councillors for the St. T. Ward in November, 1884, S. was returned. The objection was then taken that S. was disqualified, he having been in liquidation when he was a member of the council, and not having paid twenty shillings in the pound. *Held*, that the objection was valid. *Held also*, that where a statute provides that in a given event persons shall be re-eligible for election, that is tantamount to saying that they shall be disqualified until they comply with the conditions of re-qualification. *Futcher* v. *Saunders*, 49 J. P. 424.

An assignment of a man's entire property for the benefit of his creditors is not a composition. *R.* v. *Cooban*, 18 Q. B. D. 269 ; 56 L. J. M. C. 33 ; 51 J. P. 500.

Where a firm of partners made an arrangement with the creditors of the firm, it was held that every member of the firm had made an arrangement with his creditors within the meaning of s. 46 of the Local Government Act, 1894. *Ward* v. *Radford*, 10 T. L. R. 349. See also as to partnership affairs in bankruptcy, *Ex parte Atherton*, 2 T. L. R. 631.

(*b*) In the case of county councillors this period is extended to twelve months. See the Local Government Act, s. 75 (14), *ante*, p. 144. The same section (sub-s. (16) (c)) provides that nothing in this section shall disqualify the chairman or vice-chairman of a council by reason of absence.

It has been held in a case arising under Sched. 2, Part I. (14) of the Elementary Education Act, 1870, disqualifying a member by absence, "except from temporary illness, or other cause to be approved by the board," that a school board are not entitled to proceed to the election of a new member without first giving the defaulting member an opportunity of explaining or excusing his absence. *Richardson* v. *Methley School Board*, [1893] 3 Ch. 510 ; 62 L. J. Ch. 943 ; 69 L. T. (N.S.) 308 ; 42 W. R. 27 ; 9 T. L. R. 603. It will be noticed, however, that the language of the statutes in that case differs from that of the text.

Turnbull v. *West Riding Athletic Club* (1894), W. N. 4, a case arising under a disqualifying provision as to directors in the articles of association of a company, may also be referred to on this point.

(*c*) Until this notice has been given the office is not vacant. See *R.* v. *Leeds* (*Mayor, etc., of*), 7 A. & E. 963 ; *Hardwick* v. *Brown*, *ante*, p. 274 ; *R.* v. *Welshpool* (*Mayor, etc., of*), 35 L. T. (N.S.) 598.

As to the publication of the notice, see s. 232, *post*. It would probably be sufficient to post it in a conspicuous place in the electoral division for which a county councillor was elected.

(*d*) The provisions of the text as to bankruptcy are to some extent superseded by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52). By s. 32 of that

Act, where a debtor is adjudged a bankrupt, he shall be disqualified for being elected to, or holding or exercising, the office of mayor, alderman, or councillor; and this disqualification is to be removed and cease if and when (a) the adjudication in bankruptcy is annulled, or (b) he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. The court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal. By the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 9, it is provided that no disqualification arising under the Act of 1883 shall exceed a period of five years from the date of any discharge granted to the debtor. Sect. 39. NOTE.

(*e*) As to the fine for non-acceptance of office, see s. 34, *ante*, p. 272.

As to the effect of the above section in the common law power of amotion from a corporate office in cases of corrupt or dishonest conduct, see *per* LOPES, L.J., in *Booth* v. *Arnold*, [1895] 1 Q. B. 571; 64 L. J. Q. B. 443; 72 L. T. (N.S.) 310; 43 W. R. 360.

40.—(1.) On a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office (*a*). Filling of casual vacancies.

(2.) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would have regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council (*b*).

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

(*a*) As to the returning officer in elections of county councillors, see the Local Government Act, s. 75, *ante*, p. 141, and the County Councils (Elections) Act, 1891, *post*. The latter Act provides (s. 1) that nothing shall authorize or require a returning officer to hold an election of a county councillor to fill a casual vacancy which occurs within six months before the ordinary day of retirement of county councillors—viz., March 8th in every third year.

As to the time within which casual elections should be filled, see s. 66, *post*.

(*b*) It is necessary to distinguish the ordinary from the extraordinary vacancies where these are filled up at the ordinary annual election, otherwise the election may he avoided. *R.* v. *Rowley*, 6 Q. B. 668; 14 L. J. Q. B. 62; 8 Jur. 1170; *R.* v. *Rippon*, 1 Q. B. D. 217; 45 L. J. Q. B. 188; 34 L. T. (N.S.) 444; 24 W. R. 633; 40 J. P. 536. The provision in the text applies where two or more casual vacancies are filled at the same time, but the cases referred to cannot apply to county councillors, all of whom go out of office at the same time.

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Penalty on unqualified person acting in office.

41.—(1.) If any person acts in a corporate office without having made the delaration by this Act required (*a*), or without being qualified at the time of making the declaration, or after ceasing to be qualified (*b*), or after becoming disqualified (*c*), he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action (*d*).

(2.) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein (*e*).

(*a*) See s. 35, *ante*, p. 273.

(*b*) See s. 11 and the notes to that section, *ante*, p. 250.

(*c*) As to the disqualification of a councillor, see ss. 12, 39, *ante*, and the notes to those sections.

(*d*) This action must be brought in a borough by a burgess, in a county by a county elector. See s. 224, *post*, which deals with the procedure in such an action.

(*e*) But for this provision a person whose name was on the burgess roll might be liable to a penalty under this section if he were not qualified. But this provision will not in any way prevent the removal of a disqualified person by *quo warranto* or election petition. See *Flintham* v. *Roxburgh*, *ante*, p. 252.

Nor does it protect a person who acts, although disqualified, *e.g.* a woman. *De Souza* v. *Cobden*, [1891] 1 Q. B. 687 ; 60 L. J. Q. B. 533 ; 65 L. T. (N.S.) 130 ; 39 W. R. 454 ; 55 J. P. 565.

Validity of acts done notwithstanding disqualification, etc.

42.—(1.) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified (*a*).

(2.) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

(3.) A burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority (*b*) by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

(*a*) See s. 102, *post*. Sub-section (1) does not prevent an inquiry on an election petition into the validity of a vote given by a disqualified person in virtue of the corporate office. *Nell* v. *Longbottom*, [1894] 1 Q. B. 767 ; 63 L. J. Q. B. 490 ; 70 L. T. (N.S.) 499.

(*b*) The revising authority is now the revising barrister. See note to s. 29, *ante*.

Duties of town clerk, deputy, and treasurer, during vacancy or incapacity.

43. If there is no town clerk, and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or treasurer (as the case may be) is incapable of acting, all acts by law authorized or required to be done by or with respect to the town clerk or the

treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor. Sect. 43.

It is presumed that this section would enable the chairman of a county council to make an appointment in the cases mentioned in the section.

PART III.

Preparations for and Procedure at Elections.

Parish Burgess Lists ; Burgess Rolls ; Ward Rolls.

44.—(1.) Where the whole or part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made, in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878. Preparation and revision of parish burgess list.

(2.) Where no part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses shall be made out and revised, and claims and objections relating thereto may be made in accordance, as nearly as may be, with the provisions of Part I. of the Third Schedule.

(3.) In either case the lists shall be styled the parish burgess lists.

It is provided by the County Electors Act, 1888, s. 4, *post*, that in all boroughs the lists of burgesses shall be revised by the revising barrister in manner provided by the 41 & 42 Vict. c. 26, and that revising assessors shall no longer be appointed. Sub-section (2) of the above section is therefore practically repealed. The same section also provides that the lists of county electors in parishes outside boroughs shall be made out and revised in like manner as burgess lists in boroughs, with certain qualifications for which reference may be made to the section itself, *post*.

45. (*a*)—(1.) When the parish burgess lists have been revised and signed, the revising authority (*b*) shall deliver them to the town clerk (*c*), and a printed copy thereof (*d*), examined by him and signed by him, shall be the burgess roll of the borough. The burgess roll and ward rolls.

(2.) The burgess roll shall be completed on or before the twentieth of October in each year, and shall come into operation on the first of November in that year, and shall continue in operation for the twelve months beginning on that day (*e*).

(3.) The names in the burgess roll shall be numbered by wards or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to wards or polling districts (*f*).

(4.) Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough.

Sect. 45 (5). (5.) Where the borough has wards, the burgess roll shall be made in separate rolls called ward rolls, one for each ward, containing the names of the persons entitled to vote in that ward, and the ward rolls collectively shall constitute the burgess roll (*g*).

(6.) A burgess shall not be enrolled in more than one ward roll (*h*).

(7.) Where a duplicate of a burgess list is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878, it shall have the same effect as the original, and may be delivered instead thereof (*i*).

(8.) Every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

(9.) No stamp duty shall be payable in respect of the enrolment of a burgess.

(*a*) It is provided by the County Electors Act, 1888, s. 7, that the clerk of the peace of every county shall make up a register of all persons registered as burgesses or county electors in the county, both for the county and for each electoral division into which the county is divided for the purpose of election of the county authority, and such number of copies as the clerk of the peace may require of the list of burgesses as revised shall be delivered by the town clerk to such clerk of the peace for the purpose of making up such register. Consequently in all boroughs the revised list of burgesses will be delivered to the town clerk as provided by the above section, and it will be his duty to print and sign the burgess roll, and to send copies of it to the clerk of the peace to enable the latter to make up the roll of county electors. Section 7 of the County Electors Act contains a further provision applying the above section to the roll of county electors. It provides that "the Registration of Electors Acts, and ss. 45, 48 and 71 of the Municipal Corporations Act, 1882, shall apply for the purposes of this section, with the substitution of clerk of the peace for town clerk, and of county register and division register for burgess roll and ward roll respectively, and of electoral division for ward, and of county fund for borough fund."

(*b*) The revising authority is now in every case the revising barrister.

(*c*) In making out the burgess roll of a municipal borough the names of eighty-two persons were put in the wrong wards, and the mistake was not discovered till after the revising barrister had settled the list. *Held*, that the proper remedy was not a *mandamus* to the town clerk to correct the roll. *Quære* whether the remedy was not a *mandamus* to the revising barrister. *Ex parte Keay*, 56 J. P. 470 ; 65 L. T. (N.S.) 323.

(*d*) The town clerk of a borough must print the burgess list (s. 48, *post*). The clerk of the peace must print the list of county electors in places not in boroughs. See note (*a*), *supra*.

(*e*) The County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 2, *post*, provides that the county register shall be completed before December 20th, in every year, and come into operation on the next January 1st, and that the burgess lists forming the burgess roll which comes into operation on November 1st in every year, shall on and after that day until the next January 1st, form part of the county register in substitution for the former burgess lists.

(*f*) The County Electors Act, 1888, s. 4, amended by the Local Government Act, s. 76, *ante*, p. 147, provides as follows : (2) In the construction of the

Registration of Electors Acts for the purpose of their application to a parish *not situate within a municipal borough*, there shall be made the variations following, and such other variations as may be necessary for carrying into effect the application, that is to say :—(*e*) Section 21 of the Parliamentary and Municipal Registration Act, 1878, shall not apply, and the list and register of voters shall be made out alphabetically, but shall be framed in parts for polling districts and electoral divisions . . . in such a manner that the parts may be conveniently compiled, or put together to serve as lists for polling districts . . . and as electoral division lists. (3) Notwithstanding anything in this Act contained, where a municipal borough or an urban district is co-extensive with any electoral division or divisions of a parliamentary county, the list of voters may be directed by the county council to be made out according to the order in which the qualifying premises appear in the rate book, and s. 21 of the Parliamentary and Municipal Registration Act, 1878, shall apply to such borough or urban district, and where lists of voters are so made out, nothing in this Act shall require such part of the county register as consists of these lists to be arranged alphabetically. The names of the parliamentary electors and of the county electors in the lists may be numbered consecutively, and such portion of these lists as consist of the names of parliamentary electors may be taken to form the register for the purpose of parliamentary elections, and such portion of these lists as contains the names of county electors may be taken to form the register of county electors.

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(*g*) See s. 7 of the County Electors Act, 1888, set out in note (*a*), *supra*.

(*h*) This will not apply to county electors, for by s. 7 of the County Electors Act, 1888, it is expressly provided that nothing in that section shall prevent a county elector from being registered in more than one division register. But though he may be registered in more than one, he can only vote in one division at the same election. *Knill* v. *Towse*, 24 Q. B. D. 697 ; 59 L. J. Q. B. 455 ; 63 L. T. (N.S.) 47 ; 38 W. R. 521 ; 54 J. P. 789 ; 6 T. L. R. 310.

(*i*) It is provided by 41 & 42 Vict. c. 26, s. 31, that the revising barrister shall, as part of the business of the revision, at the request of the town clerk of any municipal borough sign and deliver to him a duplicate of the whole or part of any revised list made out in divisions and relating to that municipal borough. Every such duplicate shall be prepared by the town clerk at whose request it is so signed and shall be kept by him for use for municipal purposes. This section now applies to all boroughs, and also to parishes in new boroughs. See note (*a*), *supra*.

Arrangement of lists and rolls.

46.—(1.) If and as far as the council so direct, the parish burgess lists, and the burgess roll, and the ward rolls (if any), and the lists of claimants and respondents, or any of those documents, shall be arranged in the same order in which the qualifying properties appear in the rate-book for the parish in which they are situate, or otherwise in such order as will cause those lists and rolls to record the qualifying properties in successive order in the street or other place in which they are situate.

(2.) Subject to any such direction, and to the provisions of this Act as to polling districts, the arrangement of the lists and rolls shall be alphabetical.

This section will not apply to parishes not situate in a municipal borough, and even in boroughs it may be superseded by the County Electors Act, 1888, s. 4 (3), set out in note (*f*) to the last section. It is there provided that, where

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a municipal borough or urban district is co-extensive with an electoral division or divisions of a parliamentary county, the list of voters may be directed by the county council to be made out according to the order in which the qualifying premises appear in the rate book, and s. 21 of the 41 & 42 Vict. c. 26, shall apply to such borough or district. The 41 & 42 Vict. c. 26, s. 21, is substantially to the same effect as the text so far as regards the burgess lists and rolls. Therefore, if the county council make no order under s. 7 of the County Electors Act, it will be open to the borough council to make an order under the provisions in the text.

Correction of burgess roll.

47.—(1.) Where the parish burgess lists are revised under the Parliamentary and Municipal Registration Act, 1878, the burgess roll is subject to alteration or correction in manner provided by section thirty-five of that Act (*a*).

(2.) Where the parish burgess lists are revised under this Act, any person whose claim has been rejected or name expunged at the revision of the lists may apply, within two months after the last sitting of the revision court, to the High Court in the Queen's Bench Division for a mandamus to the mayor to insert his name in the burgess roll; and thereupon the court shall inquire into the title of the applicant to be enrolled (*b*).

(3.) If the court grants a mandamus, the mayor shall insert the name in the burgess roll, and shall add thereto the words "by order of Her Majesty's High Court of Justice," and shall subscribe his name to those words (*b*).

(*a*) The parish burgess lists and the lists of county electors must now be revised in every case under the Act of 1878. By s. 35 of that Act, "the provisions of the Parliamentary Registration Acts as to appeal from the decision of the revising barrister shall apply to a decision on a revision of the burgess lists, and the provisions of the said Acts as to the alteration or correction of the register, in pursuance of any judgment or order of the Court of Appeal, shall apply to the alteration or correction of the burgess roll made up from the burgess lists as if it were a register of parliamentary voters, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him." This provision will apply to the lists and roll of county electors with the necessary modifications.

(*b*) As no lists will henceforth be made out "under this Act," sub-ss. (2) and (3) are practically repealed.

Printing and sale of burgess roll and other documents.

48.—The town clerk shall cause the parish burgess lists, the lists of claimants and respondents, and the burgess roll to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy.

(2.) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878, the proceeds of sale shall go to the borough fund.

For the provisions of the County Electors Act, 1888, applying this section to the roll of county electors, see note (*a*) to s. 45, *ante*, p. 280.

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The 41 & 42 Vict. c. 26, s. 30, sub-s. (1) of which now applies to all boroughs, provides that one-half of the moneys received in respect of the burgess lists shall be applied in the manner directed by the Parliamentary Registration Acts, and the other half shall be paid to the borough fund.

Separate list of persons qualified to be councillors but not to be burgesses.

49.—(1.) The overseers of each parish shall, at the same time that they make the parish burgess list, make a list of the persons entitled in respect of the occupation of property in that parish to be elected councillors, as being resident within fifteen miles although beyond seven miles from the borough.

(2.) The provisions of this Act as to the parish burgess lists, and claims and objections relating thereto, and the revision of those lists shall, as nearly as circumstances admit, apply to the lists made under this section.

(3.) The town clerk shall arrange the names entered in these lists, when revised, in alphabetical order as a separate list (in this Act called the separate non-resident list), with an appropriate heading, at the end of the burgess roll.

The separate non-resident list will continue to be made out in boroughs as heretofore. The list so made out in boroughs will contain the names of persons who are entitled to be enrolled as burgesses in all respects save that of residence within seven miles of the borough, but who, by reason of residence within the fifteen mile limit, are qualified to be elected councillors under s. 11, sub-s. (2), *ante*, p. 250. If a person is enrolled on a borough non-resident list, he will also be qualified to be elected a county councillor for the county of which the borough forms a part. See the Local Government Act, s. 75 (12), *ante*, p 144.

A precisely similar list is to be made out for each county. The County Electors Act, 1888, s. 12, provides that "a list of persons occupying property in a county, and residing within fifteen miles, but more than seven miles, from the county, shall be made out in accordance with s. 49 of the Municipal Corporations Act, 1882, and that section shall apply as if it were herein re-enacted, with the substitution of 'county' for 'borough,' and of 'county elector' for 'burgess,' and of 'clerk of the peace' for 'town clerk.'" It is provided by the Local Government Act, s. 76 (6), *ante*, p. 150, that nothing in s. 12 of the County Electors Act applies to any person occupying property in a borough. The reason of this provision is obvious ; it avoids the necessity of including in the county non-resident list the names of persons who are enrolled in the corresponding list in the borough. But the result is that a person who occupies property in a borough, and who resides more than fifteen miles from the borough, will not be qualified to be elected a councillor, though his residence may be in the county, or within fifteen miles of its boundary. This hardship is more apparent than real, for such a person will generally be qualified as a county elector in respect of his residence.

In counties outside boroughs the overseers must make a separate non-resident list for their parishes. These lists will be revised by the revising barrister and arranged by the clerk of the peace, as provided by the above section.

As to the mode of measuring the distance, see s. 231, *post*.

In the county of London there will be no separate non-resident list, for by s. 77 of the Local Government Act, *ante*, p. 151, the persons whose names would appear upon it in London are to be registered as county electors

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Election of Councillors.

Borough and ward elections.

50.—(1.) Where a borough has no wards, there shall be one election of councillors for the whole borough.

(2.) Where a borough has wards, there shall be a separate election of councillors for each ward.

The Local Government Act, s. 2, *ante*, p. 1, provides that the members of a county council shall be elected in like manner as the council of a borough divided into wards. The divisions of a county are to be called electoral divisions, and not wards. There will therefore be a separate election of councillors for each electoral division.

Title to vote.

51.—(1.) At an election of councillors a person shall be entitled to subscribe a nomination paper (*a*), and to demand and receive a voting paper, and to vote (*b*), if he is enrolled in the burgess roll, or in the case of a ward election, the ward roll, and not otherwise.

(2.) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward (*c*).

(3.) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it (*d*).

(*a*) As to nomination papers and nominations, see Sched. 3, Part II., *post*.

(*b*) But observe, that though a person whose name is on the burgess roll (or roll of county electors, as the case may be) is entitled to vote, yet unless he is entitled to be so enrolled, he is not qualified to be elected a councillor. See *Flintham* v. *Roxburgh*, *ante*, p. 252.

(*c*) It is provided by s. 45, sub-s. (6), *ante*, p. 280, that a burgess shall not be enrolled in more than one ward roll. By the County Electors Act, 1888, s. 7, sub-s. (4), a county elector may be registered in more than one division register. But though he may be registered in more than one he cannot vote in more than one division of the county at the same election. *Knill* v. *Towse*, *ante*, p. 281.

(*d*) Persons found guilty of corrupt or illegal practices, or of illegal payment, employment, or hiring at a municipal election, are prohibited from voting by 47 & 48 Vict. c. 70, ss. 2, 22, 23 and Sched. 3, Part II., *post*.

Day of election.

52. The ordinary day of election of councillors shall be the first of November.

The ordinary day of election of county councillors is now a day to be fixed by the county council not less than six weeks before the ordinary day of retirement of county councillors. 54 & 55 Vict. c. 68, s. 1, *post*.

Returning officer at election.

53.—(1.) At an election of councillors for a whole borough the returning officer shall be the mayor.

(2.) At an election for a ward the returning officer shall be an

alderman assigned for that purpose by the council at the meeting of the ninth of November. Sect. 53 (2).

It is provided by the Local Government Act, s. 75 (2), *ante*, p. 141, that such a person as the county council may appoint shall be the returning officer for the election of county councillors of the county council, in substitution for the mayor, and for the aldermen assigned for that purpose by the council. It has been pointed out in the note to s. 50, *ante*, p. 284, that there must be a separate election for each electoral division. It will be necessary to appoint a returning officer for the entire county, corresponding to the mayor, who has special duties to perform in connection with the hearing of objections to nomination papers under Sched. 3, Part II., r. 9, *post*. This official will be the county returning officer, and he will in all divisions of the county be returning officer in the place of the mayor and aldermen. He will have to appoint a deputy returning officer for all divisions in which he does not himself undertake the duties of his office. See the notes to the Local Government Act, s. 75, sub-ss. (2) (3), *ante*, p. 142.

It is now provided by 54 & 55 Vict. c. 68, s. 3, that for the purpose of the election of county councillors for any electoral division which is coextensive with or wholly comprised in a municipal borough the following provisions shall have effect:—(a) The mayor of the borough, or some person appointed by him, or, if the mayor is dead or absent or otherwise incapable of acting, an alderman appointed by the council of the borough, shall be the returning officer, and so far as respects such election shall follow the instructions of and return the names of the persons elected to the county returning officer. (b) Nothing in s. 75 of the Local Government Act, 1888, substituting the returning officer or his deputy for the town clerk, shall extend to any such election. It may be mentioned here that a returning officer cannot act as such at an election at which he is a candidate, and that if he returned himself his election would be void. *R.* v. *Owens*, 2 E. & E. 86; 28 L. J. Q. B. 316; 23 J. P. 741; *R.* v. *Blizard*, L. R. 2 Q. B. 55; 36 L. J. Q. B. 18; 15 L. T. (N.S.) 242; 15 W. R. 105; 31 J. P. 200; *R.* v. *White*, L. R. 2 Q. B. 557; 36 L. J. Q. B. 267; 16 L. T. (N.S.) 828; 15 W. R. 988; 32 J. P. 595; *R.* v. *Ward*, L. R. 8 Q. B. 210; 42 L. J. Q. B. 126; 28 L. T. (N.S.) 118; 21 W. R. 632; 37 J. P. 453; *R.* v. *Morton*, [1892] 1 Q. B. 39; 61 L. J. Q. B. 39; 65 L. T. 611; 40 W. R. 109; 56 J. P. 105; 8 T. L. R. 50; *Fanagan* v. *Kernan*, 8 L. R. Ir. 44; *Tralee Election Petition*, 28 Ir. C. L. 10.

54. Nine days at least before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall, and, in the case of a ward election, in some conspicuous place in the ward. Notice of election.

The ordinary day of election of borough councillors is November 1st. In general the last day for giving notice under this section will be October 22nd. But if November 1st happens to be a Sunday, the day of election will be November 2nd (see s. 230, *post*), and the period of nine days must be reckoned with reference to that date. See 49 J. P. 675. The ordinary day of election of county councillors is now fixed by the county council not less than six weeks before March 8th (54 & 55 Vict. c. 68, s. 1, *post*) but the mode of computation of time for purposes of the notice of election is as above stated.

In elections of county councillors the returning officer must give this notice, which must be fixed in some conspicuous place in the electoral division. See s. 232, *post*, and the Local Government Act, s. 75, *ante*, p. 141.

Care must be taken to calculate the last day for delivery of nomination

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papers, for a mistake may avoid the election. *Howes* v. *Turner*, 1 C. P. D. 670 ; 45 L. J. C. P. 550 ; 35 L. T. (N.S.) 58.

NOTE. It is provided by the Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 7, *ante*, p. 234, that there should be added to every notice of election published under the Ballot Act, 1872, the notification with respect to claims against returning officers which is set out in Sched. 2 to the first-mentioned Act.

Nomination of candidates.

55. The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule.

See the schedule, *post*.

Relation of nomination to election.

56.—(1.) If the number of valid nominations exceeds that of vacancies, the councillors shall be elected from among the persons nominated.

(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4.) If there is no valid nomination the retiring councillors shall be deemed to be re-elected.

In county council elections the selection referred to in sub-s. (3), will be made by the returning officer. See the Local Government Act, s. 75 (4), *ante*, p. 142.

Where on a casual vacancy no valid nomination is made, a *mandamus* will be granted under s. 70, *post*, on the application of a burgess, to hold the election, and the court will order the costs of the application to be paid by the corporation. *R.* v. *Stratford-upon-Avon* (*Mayor of*), 2 T. L. R. 431. This case was followed as to a county council election in *R.* v. *West Sussex County Council*, 65 L. J. Q. B. 184 ; 59 J. P. 808 ; 73 L. T. (N.S.) 566 ; 12 T. L. R. 99 ; *Reg.* v. *Surrey County Council*, *Times*, August 5th, 1896.

By a "valid nomination" is to be understood a nomination to which no objection has been made before the mayor or returning officer, or a nomination to which the objections made before the mayor or returning officer have been disallowed by him. But it does not mean a nomination which is absolutely valid for all purposes so as not to be questionable on a petition questioning the election or return. *Pritchard* v. *Bangor* (*Mayor of*) 13 App. Cas. 241 ; 57 L. J. Q. B. 313 : 58 L. T. (N.S.) 502 ; 37 W. R. 103 ; 52 J. P. 564.

Publication of uncontested election.

57.—(1.) If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election.

The hour must be determined by Greenwich time, as provided by 43 & 44 Vict. c. 9. As to the day of election, see the note to s. 52, *ante*, p. 284. The

day of election to fill a casual vacancy is the day fixed by the mayor, or in elections of county councillors by the returning officer under s. 66, *post*.

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Mode of conducting poll at contested election. 35 & 36 Vict. c. 33.

58.—(1.) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and subject to the modifications expressed in Part III. of the Third Schedule (*a*), and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies (*b*).

(3.) The poll shall commence at nine o'clock in the forenoon and close at four in the afternoon of the same day (*c*).

(4.) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock (*d*).

(5.) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance (*e*), may give such additional vote by word of mouth or in writing.

(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorize the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election.

(*a*) See the schedule, *post*.

(*b*) See the note to s. 40, *ante*, p. 277, as to a case where ordinary and casual vacancies are filled at the same election.

(*c*) This provision is superseded by the 48 Vict. c. 10, which provides that at every municipal election the poll (if any) shall commence at eight o'clock in the forenoon, and be kept open until eight o'clock in the afternoon of the same day, and no longer. The Local Government Act, s. 75, (11), *ante*, p. 144, expressly provides that at an election of county councillors the hours of the poll shall be those fixed by the 48 Vict. c. 10.

(*d*) This provision also seems to be superseded by the 48 Vict. c. 10.

(*e*) This means that the returning officer may give this vote whether or not he is enrolled as a burgess or as an elector for the division, as the case may be.

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Where no casting vote was given, and the proceedings were therefore abortive, *mandamus* was granted to the returning officer to hold a fresh election. *Croone* v. *Waugh*, *Times*, June 3rd, 1892. But in a subsequent case where the application was made by a candidate and not by electors, and a year had elapsed since the election, the court in the exercise of their discretion refused to grant a *mandamus*. *Ex parte Barnes*, *Times*, February 7th, 1893. And see *Richmond (Borough of)*, *In re*, *Times*, March 24th, 1893.

Questions which may be put to voters.

59.—(1.) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions, or either of them :—

(a.) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough [*or* ward] as follows [*read the whole entry from the roll*]?

(b.) Have you already voted at the present election [*add in case of an election for several wards*, in this or any other ward] ?

(2.) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanor.

(4.) Save as by this Act authorized, no inquiry shall be permitted at an election as to the right of any person to vote.

This section will apply to an election of county councillors with certain modifications. "County electors" must be substituted for "burgesses," "division register" for "ward roll," "county" for "borough," and "electoral division" for "ward."

Election of Aldermen (*a*).

Time and mode of election of aldermen.

60.—(1.) The ordinary day of election of aldermen shall be the ninth of November, and the election shall be held at the quarterly meeting of the council (*b*).

(2.) The election shall be held immediately after the election of the mayor (*c*), or, if there is a sheriff, the appointment of the sheriff.

(3.) An outgoing alderman, although mayor elect, shall not vote (*d*).

(4.) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering (*e*) at the meeting to the chairman a voting paper containing the surnames and other names (*f*), and places of abode and descriptions of the persons for whom he votes.

(5.) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause

them to be read, and then deliver them to the town clerk to be kept for twelve months (*g*).

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance (*h*), shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

(*a*) In county councils, the aldermen are to be called county aldermen. See the Local Government Act, s. 2, *ante*, p. 2.

(*b*) The ordinary day of election of chairman and aldermen of a county council and the day for holding a quarterly meeting of a county council is March 16th, or such other day within ten days after the ordinary day of retirement of county councillors as the county council may fix. See County Councils (Elections) Act, 1891, *post*.

(*c*) See the next section. If the election of aldermen precedes that of the mayor, it will be void. *R.* v. *McGowan*, 11 A. & E. 869.

(*d*) It is provided by the Local Government Act, s. 2, *ante*, p. 2, that a county alderman shall not, as such, vote in the election of a county alderman. The meaning of the words "as such" is obscure. In a borough council the aldermen may vote with the exception mentioned in the text. Where an alderman was elected mayor, and thereupon made and subscribed the declaration, and then voted in the election of aldermen, it was held that his vote was invalid, for at the time when he voted he had not ceased to be an outgoing alderman within the meaning of the text. *Bridport Election Petition*, *Hounsell* v. *Suttill*, 19 Q. B. D. 498 ; 56 L. J. Q. B. 502 ; 57 L. T. (N.S.) 102 ; 36 W. R. 157 ; 51 J. P. 440.

(*e*) The collection of the voting papers by the town clerk in the presence and view of the chairman, who received them immediately from the town clerk, was held to be a sufficient compliance with this sub-section. *Baxter* v. *Spencer*, 64 L. J. Q. B. 644 ; 72 L. T. (N.S.) 838 ; 59 J. P. 376.

(*f*) The other names may probably be denoted by initials. See *R.* v. *Plenty*, L. R. 4 Q. B. 346, and the cases cited in the notes to s. 241, *post*.

(*g*) In counties, the clerk of the council must keep the voting papers.

(*h*) These words appear to be inserted to make it clear that his right of a casting vote was not intended to confer a right to a first vote where none such existed in fact. *Nell* v. *Longbottom*, [1894] 1 Q. B. 767 ; 63 L. J. Q. B. 490 ; 70 L. T. (N.S.) 499.

Election of Mayor.

Time and mode of election of mayor.

61.—(1.) The ordinary day of election of mayor shall be the ninth of November (*a*).

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election.

(3.) An outgoing alderman may vote although the person for whom he votes is an alderman (*b*).

(4.) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote (*c*).

(*a*) In counties, the chairman of the county council is called chairman, instead of mayor. See the Local Government Act, s. 2, *ante*, p. 4. As to the

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ordinary day of election of chairman of a county council and the date of the quarterly meeting, see note (*b*) to s. 60, *ante*.

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(*b*) An outgoing alderman is eligible. See s. 15, sub-s. (2), *ante*, p. 256. But this sub-section will not apply to a county council. See the Local Government Act, 1888, s. 75 (10), *ante*, p. 143.

(*c*) This sub-section does not prevent the chairman from voting in the first instance unless he is otherwise disqualified. See *Nell* v. *Longbottom*, cited in the note to the preceding section.

Election of Auditors and Assessors.

Time and mode of election of auditors and assessors.

62.—(1.) The ordinary day of election of elective auditors shall be the first of March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint.

(2.) The ordinary day of election of revising assessors shall be the first of March.

(3.) If the election of elective auditors and that of revising assessors are held at the same time, then at the poll one voting paper only shall be used by any person voting. The names of the candidates for the respective offices shall be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, shall be varied accordingly ; but in the counting of the votes every voting paper shall be deemed to be a separate voting paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

(4.) An elector shall not vote for more than one person to be elective auditor or revising assessor.

(5.) Elections of elective auditors and of revising assessors shall be held at the town hall or some one other convenient place appointed by the mayor.

(6.) Save as in this section provided, all the provisions of this Act with respect to the nomination and election of councillors for a borough not having wards shall apply to the nomination and election of elective auditors and revising assessors.

It is provided by the Local Government Act, s. 75 (16) (b), *ante*, p. 145, that the provisions of this Act as to borough auditors shall not apply to county councils.

Revising assessors are no longer to be elected in any borough. See the note to s. 29, *ante*, p. 268.

Supplemental and Exceptional Provisions.

Right of women to vote.

63. For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women.

The County Electors Act, 1888, s. 2, extends the provisions of this section to so much of every county as is not comprised within the limits of a municipal

borough. Women are therefore qualified to be enrolled and to vote as burgesses or county electors. But it is to be inferred from this section that women may not be elected. Had no express provision been made, a woman might have been deemed a "person" within the meaning of ss. 9 and 11, having regard to the provisions of 13 & 14 Vict. c. 21. But this section by providing in effect that a woman shall be a "person" within s. 9, implies that she is not a person within s. 11. See the judgments in *Flintham* v. *Roxburgh*, and *Beresford Hope* v. *Sandhurst*, *ante*, p. 252. The right of women to vote under this section does not extend to married women. See *R.* v. *Harrald*, L. R. 7 Q. B. 361 ; 41 L. J. Q. B. 173 ; 26 L. T. (N.S.) 616 ; 20 W. R. 328 ; 36 J. P. 438.

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64. The council may divide the borough or any ward into polling districts, and thereupon the overseers shall, so far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts.

Polling districts.

This section enables a county council to divide any electoral division into polling districts.

In a parish which is not within a municipal borough, the lists of voters are to be framed in parts for polling districts and electoral divisions, and for urban districts and for wards in such a manner that the parts may be conveniently compiled or put together to serve as lists for polling districts and elections in urban districts and as electoral division or ward lists. See the County Electors Act, 1888, s. 4, sub-s. (2), amended by the Local Government Act, s. 76, *ante*, p. 147.

65. Any notice required to be given in connection with a municipal election may, as to elective auditors and revising assessors, be comprised in one notice, and may, as toward elections, comprise matter necessary for several wards.

Notices as to elections.

The provisions as to elective auditors do not apply to elections of county councillors, and revising assessors are no longer to be elected. See the note to s. 62, *ante*. The provision as to notices will, however, apply to elections of county councillors, and will enable one notice to be given comprising matter necessary for several electoral divisions.

66.—(1.) On a casual vacancy in a corporate office, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3.) In other cases the day of election shall be fixed by the mayor.

Time for filling casual vacancies.

As to the holding of elections to fill casual vacancies, see s. 40, *ante*, p. 277.

For a case where there was no valid nomination to fill a casual vacancy, see *R.* v. *Stratford-upon-Avon*, *ante*, p. 286.

The notice of a casual vacancy may be given by any two burgesses or county electors. It may be given in county councils to the chairman or clerk of the council. Where a person has been elected and has resigned, the new election

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may be within fourteen days after notice under this section. *R.* v. *Bester*, 3 L. T. (N.S.) 667 ; 9 W. R. 277 ; 7 Jur. (N.S.) 262.

NOTE. It seems that the word " mayor " in sub-s. (1) must be read as " chairman of the county council," but whether this be so or not the word must be read as standing for " returning officer " in sub-s. (3). See the Local Government Act, s. 75, *ante*, p. 142.

Illness, etc. of mayor or returning officer.

67.—(1.) If the mayor is dead, or is absent, or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council shall forthwith choose an alderman to execute those powers and duties in the place of the mayor.

(2.) In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed the number of wards, a councillor, not being a councillor for that ward, and not being enrolled in the ward roll for that ward.

This section does not apply to county councils, unless it is read as an express provision that in case of the death, etc., of the county returning officer the county council may appoint another person in his stead. The county council appoint the county returning officer under s. 75 (2) of the Local Government Act, *ante*, p. 141, and there seems to be no reason why they should not, without the aid of this section, appoint another person in case of his death, etc. Sub-s. (2) cannot apply, for the county returning officer is to be substituted for the alderman as well as for the mayor. See the note to s. 53, *ante*, p. 284.

Election of councillor in more than one ward.

68. If a person is elected councillor in more than one ward, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the town clerk, or in his default the mayor shall, within three days after the time for choice has expired, declare for which of those wards he shall serve, and the choice or declaration shall be conclusive.

The reference to the mayor and town clerk must be read as a reference to the returning officer, having regard to the Local Government Act, s. 75, sub-ss. (4) and (5), *ante*, p. 142.

Upon the declaration being made a casual vacancy will be created in the division or ward for which the councillor has elected not to serve. As to the filling up of such casual vacancies, see s. 40, *ante*, p. 277; s. 66, *ante*, p. 291.

Elections not in churches.

69. A municipal election shall not be held in any church, chapel, or other place of public worship.

Omission to hold election or election void.

70.—(1.) If a municipal election is not held on the appointed day, or within the appointed time, it may be held on the day next after that day or the expiration of that time.

(2.) If a municipal election is not held on the appointed day, or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal

corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a mandamus for the election to be held on a day appointed by the court (*a*). Sect. 70 (2).

(3.) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall (*b*), and shall be kept so fixed for at least six days before the day appointed for the election ; and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

(*a*) For cases where *mandamus* was granted, see the notes to s. 56, *ante*, p. 286 ; s. 58, pp. 287—288.

(*b*) See s. 231, *post*. In the election of county councillors the notice may be fixed in a conspicuous place in the division.

71.—(1.) If a parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll. Burgess roll to be in operation until revision of new burgess roll.

(2.) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

The above section is expressly applied to elections of county councillors by s. 7 of the County Electors Act, 1888. See that section, *post*. As to the dates on which the burgess roll and the county register come into operation, see s. 45, sub-s. (2), and note (*e*) *ante*, p. 280.

72. An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act. Non-compliance with rules.

See Sched. 3, *post*.

Schedule 8 is not incorporated by the Local Government Act except as to the Forms of Declaration in Part I.

The deputy returning officer for an electoral division of a county supplied for use at an election of a county councillor printed nomination forms in which the name of the division did not appear, but space was left for it. A candidate was nominated by one of such forms, which was signed by the nominators and delivered to the officers without the name of the division having been inserted. It was held that the omission was a mistake in the use of the form within the above section. *Marton* v. *Gorrill*, 23 Q. B. D. 139 ; 58 L. J. Q. B. 329 ; 60 L. T. (N.S.) 867 ; 54 J. P. 181 ; 5 T. L. R. 443. And see the cases cited in the note to s. 241, *post*.

73. Every municipal election not called in question within twelve months after the election, either by election petition or by information in the nature of a *quo warranto*, shall be deemed to have been to all intents a good and valid election. Election valid unless questioned within twelve months.

Although an election may not have been questioned within the twelve months above mentioned, yet an unqualified person who has been elected will

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not be able to take his seat, and will be liable to penalties under s. 41, *ante*, p. 278, if he acts in the office. See *De Souza* v. *Cobden*, [1891] 1 Q. B. 687 ; 60 L. J. Q. B. 533 ; 65 L. T. (N.S.) 130 ; 39 W. R. 454 ; 55 J. P. 565 ; 7 T. L. R. 441.

A municipal election must be questioned by means of an election petition, and cannot be questioned by *quo warranto* on any of the grounds mentioned in s. 87, *post*. That section does not, however, apply to prevent proceedings in the nature of *quo warranto* against a person who has been duly elected and subsequently becomes disqualified. As to the time within which and the manner in which proceedings by way of *quo warranto* must be taken, see s. 225, *post*.

Offences in relation to nomination papers.

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

Where a person signed the name of a voter to a paper with the consent of the voter's wife, but without his knowledge and believing that he might do so, it was held that he could not be convicted of *fabricating* the voting paper within the meaning of 21 & 22 Vict. c. 98, s. 13. *Aberdare Local Board* v. *Hammett*, L. R. 10 Q. B. 162 ; 44 L. J. M. C. 49 ; 32 L. T. (N.S.) 20 ; 39 J. P. 69.

The respondent, a candidate at a local board election, called at the house of a voter to whom a voting paper had been sent, and asked her how she intended to vote, and to hand him the voting paper, which she did. He then inquired if she knew how to fill it up, and she replied in the affirmative. The respondent thereupon, without any authority, express or implied, from the voter, wrote in pencil the initials of the voter against his own name. The voter objected to his doing so. The respondent left the voting paper with the voter with her initials so written by him against his own name, but with no other mark upon it. The voter subsequently struck out the initials so written by the respondent and placed his initials against the names of three other candidates, and signed her own name to the voting paper. It was found that the respondent so pencilled the initials of the voter with the intent of indicating on her behalf that she intended to vote for him, and of inducing and procuring her to vote for him. The respondent was successful at the poll. A petition was presented against his return, on the ground of illegal practices, *inter alia*, of fabricating in whole or in part a voting paper, and of falsely assuming to act in the name or on behalf of a voter. It was held that the act of the respondent did not amount to a fabrication in whole or in part of the voting paper, nor to falsely assuming to act in the name or on behalf of the voter. *Gough* v. *Murdoch*, 57 L. T. (N.S.) 308 ; 35 W. R. 836 ; 51 J. P. 471. See also *Bell* v. *Morsar*, 40 L. T. (N.S.) 128 ; 43 J. P. 174.

Offences in relation to lists and elections.

75.—(1.) If a mayor or revising assessor neglects or refuses to revise a parish burgess list (*a*), or a mayor or alderman (*b*) neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action (*c*).

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(2.) If—

(a.) An overseer neglects or refuses to make, sign (*d*), or deliver a parish burgess list, as required by this Act; or

(b.) A town clerk (*e*) neglects or refuses to receive, print, and publish a parish burgess list or list of claimants or respondents, as required by this Act; or

(c.) An overseer or town clerk (*e*) refuses to allow any such list to be inspected by a person having a right thereto;

he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action (*c*).

(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

(*a*) It has already been pointed out that in future no parish burgess list will be revised by the mayor and revising assessors. See s. 44, *ante*, p. 279, and the notes thereto.

(*b*) In applying this section to county councils the returning officer must be substituted for the mayor or alderman. See the Local Government Act, s. 75, *ante*, p. 142.

A mere omission, though not wilful, is an offence against this section. *King* v. *Burrell*, 12 A. & E. 460; *King* v. *Share*, 3 Q. B. 31; *Clarke* v. *Gant*, 8 Ex. 252; *Hunt* v. *Hibbs*, 5 H. & N. 123; 29 L. J. Ex. 122; 6 Jur. (N.S.) 78; 2 L. T. (N.S.) 379; 8 W. R. 238; 24 J. P. 118; *Harwich* (*Mayor, etc., of*) v. *Grant*, 5 E. & B. 182.

(*c*) See s. 226, *post*. But observe that by sub-s. (3) the action must be brought within three months. Notice of action is not necessary. *King* v. *Burrell*, *supra*.

(*d*) The delivery of a printed copy, corrected by an overseer in his own handwriting, is not a sufficient signature. *King* v. *Burrell*, *supra*.

(*e*) This will apply to the clerk of a county council with regard to the county electors' lists. Where liability is incurred for neglecting to make out a list, a second penalty is not incurred under this sub-section. *Gregory* v. *Fell*, 6 Jur. 422.

Revival of former law on expiration of Ballot Act.

76.—(1.) If the Ballot Act, 1872, ceases to be in force, so much of this Act as directs that the poll at a contested election of councillors shall be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and as applies provisions of the Ballot Act, 1872, to a poll at a contested election of councillors, shall forthwith cease to be in force, and thereupon the enactments in Part IV. of the Third Schedule shall revive and be in force.

(2.) But this cesser and revivor shall not affect any act done, right acquired, or liability or fine incurred, or the institution

Sect. 76 (2). or prosecution to its termination of any proceeding in respect of any such right, liability, or fine.

The Ballot Act, 1872, is continued in force until December 31st, 1898, by the Expiring Laws Continuance Act, 1897.

PART IV.

Corrupt Practices and Election Petitions.

Corrupt Practices.

Definitions.

77. In this Part—

"Bribery," "treating," "undue influence," and "personation" (*a*), include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections (*b*) :

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office (*c*) :

"Voter" means a burgess or a person who votes or claims to vote at a municipal election :

"Election court" means a court constituted under this Part for the trial of an election petition :

"Municipal election petition" or "election petition" means a petition under this Part complaining of an undue municipal election :

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868 :

"Prescribed" means prescribed by general rules made under this Part :

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates.

(*a*) The definition of these offences will be found in the Municipal Elections (Corrupt Practices) Act, 1884 (47 & 48 Vict. c. 70), Sched. 3, *post*, which amends this part of the Municipal Corporations Act, 1882, and is incorporated with the Local Government Act by s. 75, *ante*, p. 141.

(*b*) The definition of "corrupt practice" and "canvasser" are repealed by 47 & 48 Vict. c. 70, *post*.

(*c*) See the note to s. 4 of the Municipal Elections (Corrupt Practices) Act, 1884, *post*.

78. * * * **79.** * * * **80.** * * *

These sections were repealed by the 47 & 48 Vict. c. 70, *post*.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election. Sect. 81. Avoidance of election for general corruption.

An election might be avoided under this section, although the candidates and their agents had nothing to do with the general corruption, etc. See *The Lichfield case*, 1 O'M. & H. 26; 20 L. T. (N.S.) 14; *The Bradford case*, 1 O'M. & H. 40; 19 L. T. (N.S.) 725; *The Cheltenham case*, 19 L. T. 818; *The Salford case*, 1 O'M. & H. 140; *The Nottingham case*, 1 O'M. & H. 246; *The Galway case*, 2 O'M. & H. 56; *The Drogheda case*, 1 O'M. & H. 255; *The Dudley case*, 2 O'M. & H. 121.

82. * * * **83.** * * * **84.** * * *

These sections were repealed by 47 & 48 Vict. c. 70, *post*.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny. Striking off votes.

The 47 & 48 Vict. c. 70, s. 22, *post*, provides that every person guilty of a corrupt or illegal practice, or of illegal employment, payment, or hiring at a municipal election, is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny. This provision is of wider application than the above section, and practically supersedes it.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election. Personation.

These enactments are contained in 6 Vict. c. 18, ss. 85—89, which are incorporated with the Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24, and are set out, *ante*, p. 215. They provide for the appointment of agents to detect personation at the time of polling, for the giving of persons charged with personation into custody, and for the proceedings before justices on the charge.

Election Petitions.

87.—(1.) A municipal election may be questioned by an election petition on the ground— Power to question municipal election by petition.

(a.) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation (*a*); or

(b.) That the election was avoided by corrupt practices or offences against this Part committed at the election (*b*); or

(c.) That the person whose election is questioned was at the time of the election disqualified (*c*); or

(d.) That he was not duly elected by a majority of lawful votes (*d*).

Sect. 87 (2). (2.) A municipal election shall not be questioned on any of those grounds except by an election petition (*e*).

(*a*) For the definition of these offences, see Part I. of Sched. 3 of the 47 & 48 Vict. c. 70, *post*, and the notes to that schedule ; and see s. 81 and notes *ante*.

(*b*) An election may also be questioned for illegal practices. See 47 & 48 Vict. c. 70, ss. 8, 25, *post*.

(*c*) This applies only to disqualifications existing at the time of the election. If a councillor becomes disqualified after he has been elected, the proper remedy is by *quo warranto*. Where the mayor disallowed an objection to a nomination paper, relating not to its form, but to the time of its delivery, it was held that this decision might be questioned on petition under the provision in the text. *Howes* v. *Turner*, 1 C. P. D. 670 ; 45 L. J. C. P. 550 ; 35 L. T. (N.S.) 58. BRETT, J., pointed out that the word *disqualified* was not limited to personal disqualification only.

Two candidates, R. and P., were nominated for the office of councillor of a ward of a borough. P. objected to R.'s nomination on the ground that he was disqualified, but the mayor disallowed the objection. P. insisted on the objection throughout the election. At the poll R. received a majority of votes. The day after the poll the returning officer issued a public notice, stating the number of votes given for each candidate and the objections, and declaring P. to be duly elected. Both P. and R. subscribed the declaration of acceptance of office under ss. 34, 35, *ante*. It was held by the House of Lords (affirming the Court of Appeal) that the returning officer had no jurisdiction to determine the question of disqualification, the proper method for determining that question being an election petition under this section. *Pritchard* v. *Bangor* (*Mayor, etc., of*), 13 App. Cas. 241 ; 57 L. J. Q. B. 313 ; 58 L. T. (N.S.) 502 ; 37 W. R. 158 ; 52 J. P. 564.

If an elector having knowledge or notice of the disqualification of a candidate wilfully votes for him, his vote is thrown away. But knowledge of the fact which creates a legal disqualification does not involve knowledge that the candidate is legally disqualified, unless the fact that the disqualification exists is notorious. *Gosling* v. *Veley*, 7 Q. B. 406 ; *Drinkwater* v. *Deakin*, L. R. 9 C. P. 626 ; *R.* v. *Tewkesbury* (*Mayor, etc., of*), L. R. 3 Q. B. 629 ; 37 L. J. Q. B. 288 ; 18 L. T. (N.S.) 851 ; 16 W. R. 1200 ; *Beresford-Hope* v. *Sandhurst*, 23 Q. B. D. 79. See, further, as to votes thrown away, *R.* v. *Hiorns*, 7 A. & E. 960 ; *R.* v. *Leeds* (*Mayor, etc., of*), *ib.* 963.

Under Sched. 3, Part II. r. 7, *post*, a nomination paper must be delivered by the candidate, or his proposer or seconder, personally, and not by an agent. A nomination objected to on this ground is cognizable by the mayor, whose decision allowing it may be questioned on petition. *Monks* v. *Jackson*, 1 C. P. D. 683 ; 46 L. J. C. P. 162 ; 35 L. T. (N.S.) 95.

(*d*) In this case the petition will, in most cases, involve a scrutiny. But where a returning officer has improperly allowed an objection to a nomination paper, a petition lies under this head, for if the paper had not been rejected the votes might have been differently given. *Budge* v. *Andrews*, 3 C. P. D. 510 ; 47 L. J. C. P. 586 ; 39 L. T. (N.S.) 166.

(*e*) It follows from this provision that *quo warranto* will not lie on any of the grounds mentioned in this section.

At a municipal election A. and B. were candidates for the office of councillor. A. obtained a majority of votes over B., and was declared elected, but, being disqualified, refused to serve. B. thereupon claimed to have been elected, and having made the necessary declaration, acted on several occasions as councillor.

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A petition under 35 & 36 Vict. c. 60, was presented against both A. and B., and both of them gave notice of their intention not to oppose the petition. No notice of A.'s disqualification was given to the electors. On an application by B. to the court that his name might be struck out of the petition, the court refused the application on the ground that he was properly made a respondent. *Yates* v. *Leach*, L. R. 9 C. P. 605 ; 43 L. J. C. P. 377 ; 30 L. T. (N.S.) 790.

Where a councillor became disqualified through having made a composition with his creditors, but his office was never declared vacant under s. 39, *ante*, p. 275, and he was afterwards re-elected, it was held that if there was any remedy in such a case it was by petition, and not by *mandamus*, to declare the office void. *R.* v. *Welshpool (Mayor of)*, 35 L. T. (N.S.) 594.

At an election of an alderman for a borough there were two candidates, one of whom was the mayor. The mayor presided and voted for himself, which carried an equality of votes. He then gave a casting vote in his own favour, and declared himself elected. On application for a *quo warranto* to question his right to act as alderman, it was held that, assuming that he was improperly elected, the case fell within either (c) or (d) of sub-s. (1) of this section, and that the election could not be questioned except by election petition, and *quo warranto* would not lie. *R.* v. *Morton*, [1892] 1 Q. B. 39 ; 61 L. J. Q. B. 39 ; 65 L. T. 611 ; 40 W. R. 109 ; 56 J. P. 105 ; 8 T. L. R. 50 ; and see *R.* v. *Miles, Ex parte Cole*, 64 L. J. Q. B. 420 ; 72 L. T. (N.S.) 502 ; 43 W. R. 445 ; 59 J. P. 407.

Presentation of petition.

88.—(1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition (*a*).

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough (*b*).

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried (*c*).

(*a*) A petition may be presented against some only of the persons returned, though the ground of the petition is one affecting the validity of the election as a whole ; and the court can in such a case declare the person so petitioned against not to have been duly elected. *Line* v. *Warren*, 14 Q. B. D. 548 ; 54 L. J. Q. B. 291 ; 49 J. P. 516.

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NOTE.

An unsuccessful candidate at an election cannot be made a respondent to a petition, although he coalesced for the purposes of the election with two successful candidates, so as to be responsible equally with them for any acts done by any of the three in furtherance of the common purpose. *Lovering* v. *Dawson*, L. R. 10 C. P. 726 ; 44 L. J. C. P. 321 ; 32 L. T. (N.S.) 819.

Where a mayor *bonâ fide* decides on an objection to a nomination paper, a complaint of such decision as erroneous is not a complaint of the conduct of the mayor within the meaning of this section, and he ought not to be made a respondent. If an election is avoided through the negligence of the returning officer, the court may order him to pay the costs of the petition. *Wilson* v. *Ingham*, 64 L. J. Q. B. 775 ; 72 L. T. (N.S.) 796 ; 43 W. R. 621 ; 59 J. P. 614 ; *Harmon* v. *Park*, 6 Q. B. D. 323 ; 50 L. J. Q. B. 227 ; 44 L. T. (N.S.) 81 ; 29 W. R. 750 ; 45 J. P. 436.

(*b*) The word "prescribed" here means prescribed by general rules. See s. 77, *ante*, p. 296 ; see also s. 100, *post*, and the general rules made thereunder, which are set out, *post*.

In applying this sub-section to county council elections, the term "town clerk must be read "clerk of the council," and "borough" as "county." The publication should evidently be made in the electoral division to which it relates.

(*c*) If the petition is founded on an illegal practice it must be presented within fourteen days after the date when the town clerk or clerk of the council receives the return and declaration respecting election expenses ; and in the event of an illegal practice after the election within twenty-eight days thereafter : 47 & 48 Vict. c. 70, s. 25, *post*. By the same section it is provided that any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended, with the leave of the High Court, within the time within which a petition complaining of the election on the ground of that illegal practice can, under that section, be presented.

The court cannot after the period of twenty-one days here mentioned allow an amendment which would practically amount to a new petition, as by adding a charge of treating. *Maude* v. *Lowley*, L. R. 9 C. P. 165 ; 43 L. J. C. P. 105 ; *Clark* v. *Wallond*, 52 L. J. Q. B. 321 ; 48 L. T. (N.S.) 762 ; 31 W. R. 551 ; 47 J. P. 551.

As to an order for particulars of the charges, see r. 6 of the General Rules, and the notes thereto, *post*.

Security for costs.

89.—(1.) At the time of presenting an election petition, or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a judge thereof, on summons directs, and shall be given in the prescribed manner (*a*), either by a deposit in money, or by recognizance entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner (*b*) serve on the respondent

a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition. Sect. 89 (3).

(4.) Within five days after service of the notice the respondent may object in writing to any recognizance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

(5.) An objection to a recognizance shall be decided in the prescribed manner (*c*).

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognizance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

(*a*) See rr. 16 to 38, *post*. As to the amount of the security, see r. 26, *post*.

(*b*) See rr. 14, 15, *post*. By r. 36, the petitioner or his agent must file an affidavit of the time and manner of the service immediately after such service. The observance of these provisions as to service of the petition is a condition precedent to the trial of the petition. *Williams* v. *Tenby* (*Mayor of*), 5 C. P. D. 135; 49 L. J. C. P. 325; 42 L. T. (N.S.) 187; 28 W. R. 616; 44 J. P. 348.

(*c*) See rr. 27--34, *post*.

90. On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue. Petition at issue.

The objections here referred to are the objections to recognizances under the preceding section. See r. 37, *post*.

91.—(1.) The prescribed officer (*a*) shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner (*b*). Municipal election list.

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part the petition shall be deemed to be a separate petition against each respondent (*c*).

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different

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(*a*) That is, the master for the time being nominated as prescribed officer. See r. 1, *post*.

(*b*) As to the making out of the lists and the inspection of such lists, see r. 39, *post*.

(*c*) See *Line* v. *Warren*, *ante*, p. 299.

(*d*) This must, in relation to county council elections, be read as "different electoral divisions of the same county."

Constitution of election court.

92.—(1). An election petition shall be tried by an election court, consisting of a barrister, qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years' standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions * * * (*a*).

(5.) If a commissioner to whom the trial of a petition is assigned dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit (*b*).

(*a*) The remainder of this sub-section was repealed by 47 & 48 Vict. c. 70, Sched. 2, *post*. Section 36, sub-s. (2) of that Act, *post*, contains the substituted provision. It provides that the judges may annually appoint a number of barristers, not exceeding five, to be commissioners for the trial of election petitions, under Part IV. of the Municipal Corporations Act and that Act, and shall from time to time assign the petitions to be tried by each commissioner.

(*b*) The High Court has no appellate jurisdiction over the commissioner, and cannot review his decisions except upon a question of law reserved by him under s. 93 (8), *post*. *Preece* v. *Harding*, 24 Q. B. D. 110 ; 59 L. J. Q. B. 82. *Ex parte Ayres*, 54 L. T. (N.S.) 296. *Marsland* v. *Hickman*, 2 T. L. R. 398. Sect. 92. NOTE.

93.—(1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial (*a*). Trial of election petition.

(2.) The place of trial shall be within the borough (*b*), except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial (*c*).

(3.) The election court may in its discretion adjourn the trial from time to time (*d*), and from any one place to any other place within the borough (*b*) or place where it is held.

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election, the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows :

(a.) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence ;

(b.) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part ;

(c.) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof (*e*).

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a

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(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at *nisi prius*.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election, and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person (*g*).

(11.) The trial of a petition shall be proceeded with, notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition (*h*).

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough (*i*).

(*a*) See rr. 40, 42, *post*. See also rr. 43 as to the postponement of the trial if the barrister does not arrive in time.

(*b*) Or county, in case of a petition against the election of a county councillor.

(*c*) Where the allegations of fact in a petition are not in dispute, but are specifically admitted by the respondent, so as to render it unnecessary at the trial to call witnesses from the district in which the election took place, the court may order the petition to be tried in London, on the ground that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the county or division where the election took place. *Arch* v. *Bentinck*, 18 Q. B. D. 548; 56 L. J. Q. B. 458; 56 L. T. (N.S.) 360; 35 W. R. 476. Mere questions of expense or convenience do not constitute special circumstances enabling the High Court to order that the petition shall be tried elsewhere than in the borough or county. *Lawson* v. *Chester-Master*, [1893] 1 Q. B. 245; 62 L. J. Q. B. 231; 68 L. T. (N.S.) 60; 41 W. R. 221; 57 J. P. 806; 9 T. L. R. 168. Nor the absence of local accommodation for the persons engaged in the petition. *Collins* v. *Price*, 5 C. P. D. 544.

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The existence of intimidation in the locality would constitute "special circumstances." *Sligo case*, 1 O'M. & H. 309.

(*d*) A formal adjournment is not necessary. See r. 45, *post*. See also 47 & 48 Vict. c. 70, s. 27, *post*, p. 362.

(*e*) The court must further report as to illegal practices in manner prescribed by 47 & 48 Vict. c. 70, s. 8, sub-s. (2), *post*. Before a report is made affecting any person, opportunity must be given to such person to be heard. See s. 38 of the Corrupt Practices Act, 1883, which is set out in Schedule I., Part 2, of the Municipal Elections (Corrupt Practices) Act, 1884, *post*.

(*f*) Notwithstanding this sub-section, if leave be given, appeal lies from a judgment of the Queen's Bench Division to the Court of Appeal. See s. 242, *post*, which incorporates s. 14 of the Judicature Act, 1881 (44 & 45 Vict. c. 68); and see *Line* v. *Warren*, 14 Q. B. D. 548; 54 L. J. Q. B. 291; 49 J. P. 516; and *Beresford-Hope* v. *Sandhurst*, 23 Q. B. D. 79; 58 L. J. Q. B. 316; 61 L. T. (N.S.) 150; 37 W. R. 548; 53 J. P. 805; 5 T. L. R. 472. Without leave no appeal lies. *Unwin* v. *McMullen*, [1891] 1 Q. B. 694; 60 L. J. Q. B. 400; 39 W. R. 712; 55 J. P. 582; 7 T. L. R. 450.

(*g*) In this case the respondent must deliver to the master, six days before the day appointed for trial, a list of the objections to the election upon which he intends to rely, and the master is to allow inspection and office copies of such list to all parties concerned; and no evidence is to be given by the respondent of any objection not specified in the list, except by leave of the High Court. See r. 8, *post*.

(*h*) The respondent may have ceased to hold office by having resigned or become disqualified.

(*i*) The clerk of the county council must, in relation to county council elections, be substituted for the town clerk.

Witnesses.

94.—(1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury (*a*).

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court (*b*).

(3.) The court may examine any person so required to attend, or being in court, although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent, or either of them (*c*).

* * * * *

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the

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(*a*) As to the order of the court to compel the attendance of a witness, see r. 54, *post*.

(*b*) As to the procedure in a committal for contempt of court, see rr. 55, 56, *post*.

(*c*) Sub-ss. (5)—(8), are repealed by the 47 & 48 Vict. c. 70, *post*.

(*d*) The prescribed officer is the registrar appointed under r. 50, *post*. Under r. 53 it is his duty to ascertain and certify the amount of the allowance to a witness whose expenses are allowed by the commissioner. As to the costs of providing a court, see s. 101, *post*; as to the costs of the petition, see s. 98, *post*.

Withdrawal of petition.

95.—(1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application made in the prescribed manner, and at the prescribed time and place (*a*).

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough (*b*).

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly (*c*).

(4.) If the proposed withdrawal is, in the opinion of the court, induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that, to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition (*d*), and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent (*e*).

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

(*a*) The form of notice of application to withdraw a petition is prescribed by r. 58, *post*. The notice of application is to be left at the master's office, and copies are to be served on the respondent and on the town clerk or clerk of the county council, as the case may be, and published in the borough or county to which the petition relates. See rr. 59, 60, *post*. As to the effect of the notice, see r. 46, *post*.

The petitioners, who had presented a petition and subsequently found out

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that their agent's report, upon which the petition was based, was untrustworthy, were allowed by the court to withdraw the petition, the Public Prosecutor having ascertained by special inquiry that there was no reliable evidence to support it, and having received from the petitioners copies of the report and details of the subsequent inquiries. On a motion for leave to withdraw a petition, the court has a discretion as to the costs of the parties, and may order them to be paid by the petitioners on the higher scale and taxed as between solicitor and client. They cannot give costs to the Public Prosecutor. *Pascoe* v. *Puleston*, 54 L. T. (N.S.) 733 ; 50 J. P. 135 ; *cf. The Lichfield Election Petition*, 9 T. L. R. 92.

Where, after a recount, in which the majority of the sitting member was found to be the same as it was when announced by the returning officer, the petitioner applied for leave to withdraw, but there was no affidavit of notice to the Public Prosecutor and no affidavit of the election agent, but only of the London solicitors on each side and of the petitioner, whose affidavits showed that the parties making them did not know of any agreement nor of any terms having been entered into respecting the withdrawal, but did not state on what grounds the petition was to be withdrawn, the court refused the application. *Halifax Election Petition*, 9 T. L. R. 563. And see s. 26 of the Corrupt Practices Act, 1884, p. 361, *post*.

After a municipal election a petition was presented by an unsuccessful candidate, claiming that he was returned by a majority of lawful votes. The mayor, to save expense, induced the petitioner and the returned candidate to submit the question to the arbitration of the town clerk, who was to recount the votes. On the award being against the petitioner, he asked leave to withdraw the petition, and the court allowed him to do so on payment of the costs, the Public Prosecutor not opposing. *Mallam* v. *Bean*, 51 J. P. 230.

(*b*) See rr. 59, 60, *post*.

(*c*) See r. 61, *post*.

(*d*) See s. 89 and note, *ante*, p. 300, and r. 26, *post*.

(*e*) See *Pascoe* v. *Puleston* ; *Mallam* v. *Bean* ; *Lichfield case, supra* ; and *Devonport case*, 2 T. L. R. 345 ; *Penton* v. *Naoroji*, 4 O'M. & H. 171 ; *George* v. *Price-Jones*, 4 O'M. & H. 166 ; and as to the scale of costs, s. 29 (3) of the 47 & 48 Vict. c. 70, *post*.

Abatement of petition.

96.—(1.) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

As to notice of abatement of a petition, and the procedure on the application to be substituted as a petitioner, see r. 63, *post*.

As to security for costs, see s. 89, *ante*, p. 300.

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Withdrawal and substitution of respondents.

97.—(1.) If before the trial of an election petition a respondent other than a returning officer (*a*)—

(a.) Dies, resigns, or otherwise ceases to hold the office to which the petition relates (*b*) ; or

(b.) Gives the prescribed notice that he does not intend to oppose the petition (*c*) ;

the prescribed notice thereof shall be given in the borough (*d*), and within the prescribed time (*e*) after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

(*a*) The returning officer may be a respondent if the petition complains of his conduct. See s. 88, sub-s. (2), *ante*, p. 299. See also r. 64, *post*. As to the procedure after the master has received notice of the happening of any of these events, see rr. 46, 47, *post*.

(*b*) The petition does not abate merely because the respondent ceases to hold office.

(*c*) The notice is prescribed by r. 65, *post*. The name of a respondent will not be struck out of a petition merely because he has given this notice. See *Yates* v. *Leach*, *ante*, p. 299.

(*d*) See r. 66, *post*.

(*e*) The prescribed time is ten days. See r. 67, *post*.

Costs on election petitions.

98.—(1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines ; and in particular any costs, charges, or expenses which, in the opinion of the court, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful (*a*).

(2.) The costs may be taxed in the prescribed manner, but according to the same principles as costs between solicitor and client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed (*b*).

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within

one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognizance relating to the petition shall be held to have made default in the recognizance, and the prescribed officer (*c*) shall thereon certify the recognizance to be forfeited, and it shall be dealt with as a forfeited recognizance relating to a parliamentary election petition (*d*). Sect. 98 (3).

(*a*) An overloaded petition will be visited with costs, even if it is successful. *Birkbeck* v. *Bullard*, 54 L. T. (N.S.) 625. When a petition is wholly unfounded the court may order the petitioner to pay the costs of the Public Prosecutor. *Crossman* v. *Gent-Davis*, 54 L. T. (N.S.) 628. In certain cases the parties may be ordered to pay the expenses of the election court. See s. 101, *post*.

The barrister appointed to try the petition has an absolute discretion over the costs. In a case where the petitioners had improperly made an unsuccessful candidate a respondent, it was held that they could not object that he was not a party to the petition so as to deprive the barrister of jurisdiction to make an order upon them for his costs. *Lovering* v. *Dawson*, L. R. 10 C. P. 726; 44 L. J. C. P. 321; 32 L. T. (N.S.), 823.

(*b*) So much of this sub-section as relates to the principle of taxation is repealed by 47 & 48 Vict. c. 70, *post*. As to the mode of taxation and recovery of the costs, see ss. 29 and 32 of that Act, and r. 68, *post*, and *Pare* v. *Hartshorn*, 31 L. T. (N.S.) 486; 23 W. R. 138.

(*c*) That is, the Master. See r. 1, *post*.

(*d*) That is, in manner provided by 30 & 31 Vict. c. 125, s. 42.

Reception of and attendance on the election court.

99.—(1.) The town clerk shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate (*a*).

(2.) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed (*b*).

(4.) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court (*c*).

(*a*) This duty will, in county council elections, devolve upon the clerk to the council (see the Local Government Act, s. 75, sub-s. (5), *ante*, p. 142. The expenses will be payable out of the county fund.

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(*b*) See rr. 50, 51, *post*.

(*c*) The shorthand writer is to be the shorthand writer to the House of Commons or his deputy. See r. 52, *post*.

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Rules of procedure and jurisdiction.

100.—(1.) The judges for the time being on the rota for the trial of parliamentary election petitions may from time to time make, revoke, and alter General Rules for the effectual execution of this part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon (*a*).

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act (*b*), and of the rules under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction (*c*).

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court (*d*).

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

(*a*) See also 47 & 48 Vict. c. 70, s. 30, *post*. The rules now in force are set out *post*.

(*b*) See *Clarke* v. *Wallond*, *ante*, p. 300 ; *Lovering* v. *Dawson*, *ante*, p. 309.

(*c*) The High Court has no power to entertain an appeal against the decision of a commissioner appointed to inquire into alleged corrupt or illegal practices at an election, except on points of law reserved for its decision by way of a case stated by the commissioners. *Ex parte Ayres*, 54 L. T. (N.S.) 296. A petition against the election of members of a local board alleged undue influence by the respondents and their agents, and that corrupt and illegal practices extensively prevailed. The commissioner reported to the High Court that no corrupt practice had been proved against the respondents or otherwise, that illegal practices extensively prevailed, and that the respondents had been guilty of illegal practices ; and he certified that the respondents had not been

duly elected. On a motion for a new trial or a prohibition, on the ground that the petitioner had exceeded his jurisdiction, it was held that the report was not in excess of the jurisdiction. *Quære*, whether the Court has jurisdiction to entertain an appeal from a commissioner. *Per* STEPHEN, J. The jurisdiction, if any, ought only to be exercised under extraordinary circumstances, and when necessary in order that justice should be done. *Marshland* v. *Hickman* (*Goole Election Petition*), 2 T. L. R. 398. Sect. 100. NOTE.

(*d*) That is, by the Master. See r. 1, *post*.

101.—(1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the treasury, on their certificate, out of the borough fund or borough rate (*a*). Expenses of election court.

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court (*b*), shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely) :

(a.) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner ;

(b.) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs (*c*) ; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

(*a*) In the case of a county council these expenses will be payable out of the county fund.

(*b*) See s. 99, *ante*, p. 309. The reference to the town clerk includes a reference to the clerk to the county council. See the Local Government Act, s. 75, sub-s. (5), *ante*, p. 142.

(*c*) See s. 98, *ante*, p. 308.

Upon the trial of a petition against the return of a borough councillor under the Municipal Elections (Corrupt Practices) Act, 1872, the barrister in delivering judgment said that he found the councillor guilty of personal bribery, and that all the costs of the inquiry were to be borne by him, and made an order in writing for the payment by the councillor of certain costs under s. 19 of that Act. The written order made no provision for the remuneration and allowances to the barrister and other persons under s. 22

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(corresponding to the text). The Treasury paid the amount of such remuneration and allowances, and certified the payment to the borough treasurer, and required him to repay them the amount out of the borough fund. A rate was accordingly made and levied. The Treasury afterwards, on receiving from the barrister a letter stating that he had always intended to visit all the costs upon the councillor, and had said so in giving judgment, cancelled their certificate, and the borough corporation abandoned the rate and returned the sums levied to the ratepayers. Afterwards, the Treasury, finding that the barrister had made no written order for the payment of the remuneration and allowances, issued a fresh certificate requiring the borough treasurer to repay them the amount out of the borough fund or rates. These facts being found upon a return to a *mandamus* commanding the treasurer to repay the Treasury, it was held that no valid order had been made by the barrister for the payment of the remuneration and allowances by the councillor; that the election court was a court of record, and that neither the High Court nor the Court of Appeal on the return could amend the order so as to make it include such payment; that the act of the Treasury in certifying was not a judicial act, and that they had the power to make a second certificate, and were entitled to a peremptory *mandamus* compelling the treasurer to repay to them the amount of such remuneration and allowances out of the borough fund or rates, and compelling the corporation to order such amount to be levied by a borough rate. *R.* v. *Maidenhead* (*Mayor of*), 9 Q. B. D. 494; 51 L. J. Q. B. 444; 46 J. P. 724.

Acts done pending a petition not invalidated.

102. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

See also s. 42 (1), *ante*, p. 278.

Provisions as to elections in the room of persons unseated on petition

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy (*a*); and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness (*b*).

(*a*) As to the manner in which casual vacancies are to be filled up, see s. 40, *ante*, p. 277, and s. 66, *ante*, p. 291, and the notes to those sections.

(*b*) The reference to the mayor and aldermen must, with regard to elections of county councils, be read as a reference to the returning officer (see the Local Government Act, s. 75, sub-s. (4), *ante*, p. 142).

Prohibition of disclosure of vote

104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

See also s. 12 of the Ballot Act, 1872, *ante*, p. 213.

PART V.

CORPORATE PROPERTY AND LIABILITIES (*a*).

* * * * *

Misapplication of Corporate Property.

Prohibition of expenditure of corporate funds on parliamentary elections.

124.—(1.) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2.) Any bond, covenant, recognizance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3.) Any payment, application, bond, covenant, recognizance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4.) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5.) Any resolution, bye-law, or other proceeding of a council, purporting to direct or authorize any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6.) If any member of a municipal corporation authorizes or directs any payment or application forbidden by this section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanor, and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7.) If any corporate officer, trustee, or other person as aforesaid makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

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(8.) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the court directs, for costs, as between solicitor and client.

(9.) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses relating to parliamentary elections.

(*a*) This is the only section of Part V. which is applied to county councils. See the Local Government Act, s. 75, *ante*, p. 141.

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PART XII.

Legal Proceedings.

Prosecution of offences and recovery of fines.

219.—(1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence (*a*).

(2.) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions (*b*).

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court (*c*).

(*a*) This provision was unnecessary, having regard to 11 & 12 Vict. c. 43, s. 11, and 42 & 43 Vict. c. 49. s. 31.

(*b*) The procedure on such appeals is regulated by 42 & 43 Vict. c. 49, s. 31.

(*c*) As to the procedure in actions against corporate officers, see s. 224, *post*.

Exclusion of *certiorari*.

220. A conviction, order, warrant, or other matter made or done, or purporting to be made or done, by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by *certiorari* or otherwise into the High Court.

Notwithstanding this provision, a writ of *certiorari* will be granted where the proceedings show on the face of them a want of jurisdiction. *R.* v. *Gosse*, 3 E. & E. 277; 30 L. J. M. C. 41; 3 L. T. (N.S.) 404; *Broughton Local Board, Re*, 12 L. T. (N.S.) 310; *R.* v. *Staffordshire (Justices of)*, 16 L. T. (N.S.) 430; *R.* v. *Rose*, or *Wood*, 5 E. & B. 49; *Colonial Bank of Australasia* v. *Willan*, L. R. 5 P. C. 417; 43 L. J. P. C. 39; 30 L. T. (N.S.) 237; 22 W. R. 516. In the case last mentioned it was laid down that when

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a *certiorari* is said to be taken away by statute, the superior court is not absolutely deprived of the power to issue the writ; but its action as to the writ is controlled and limited, and it cannot quash the order removed by *certiorari* except upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order, or of manifest fraud in the party procuring it. Matters on which the defect of jurisdiction depends may be apparent on the face of the proceedings, or may be brought before the superior court by affidavit, but they must be intrinsic to the adjudication impeached. Objections on the ground of defect of jurisdiction may be founded on the character and constitution of an inferior court, the nature of the subject-matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the inferior court. The objection of defect of jurisdiction cannot be entertained if it rests solely on the ground that the judge has erroneously found a fact which was essential to the validity of his order, but which he was competent to try. *Ibid.* And see *Bradlaugh, Ex parte*, 3 Q. B. D. 509; 43 J. P. 125, and the cases cited in Paley on Convictions, 7th edition, at p. 354, Short and Mellor's Crown Office Practice, p. 116.

Where both parties agreed to waive this provision, and stated a case for the opinion of the court, the fact that the corresponding section in 11 & 12 Vict. c. 63, had taken away the *certiorari*, was held not to prevent the court from determining the question. *R.* v. *Dickenson*, 7 E. & B. 831; 26 L. J. M. C. 204; 3 Jur. (N.S.) 1076; 22 J. P. 243.

As to the practice relating to the removal of convictions, etc., by *certiorari*, see Paley on Convictions, p. 348. See also the Crown Office Rules, Nos. 28—42. It was held that the six days' notice to the justices, under No. 33 of these rules, as a preliminary to the grant of a writ of *certiorari*, must precede the motion for a rule *nisi*, and not merely the motion for the rule absolute. *Ex parte Roberts*, 50 J. P. 567. An application for *certiorari* to the Queen's Bench Division does not lie after conviction and judgment in the superior court. *Nally* v. *The Queen*, 16 L. R. Ir. 1; 15 Cox C. C. 638.

The reference in the section to an order for payment of money out of the borough fund has no application to county councils, a provision corresponding to that referred to being expressly made in the Local Government Act, s. 80, sub-s. (2), *ante*, p. 154.

Application of penalties in quarter sessions boroughs.

221.—(1.). Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough.

(2.) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

(a.) Directs payment thereof to the informer or to any person aggrieved; or

(b.) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or

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(c.) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

The above section will not apply to county councils, for by the Local Government Act, s. 75 (16) (*a*), *ante*, p. 145, it is provided that nothing in the Municipal Corporations Act, 1882, as applied by that section, shall alter the application of any fine, penalty, or forfeiture recoverable in a summary manner.

In a borough which has not a separate court of quarter sessions, though it has a separate commission, unappropriated penalties are payable in manner provided by 11 & 12 Vict. c. 43, s. 31, to the county treasurer. *Reigate (Mayor, etc. of)* v. *Hart*, L. R. 3 Q. B. 244; 37 L. J. M. C. 70; 18 L. T. (N.S.) 237; 16 W. R. 896; *Winn* v. *Mossman*, L. R. 4 Ex. 292; 38 L. J. Ex. 203; 20 L. T. (N.S.) 672; 33 J. P. 743.

It has been held that penalties recovered under the Regulation of Railways Act (3 & 4 Vict. c. 97), are payable to the borough fund, and not to the Crown. *Att.-Gen.* v. *Moore*, 3 Ex. D. 276; 47 L. J. M. C. 103; 38 L. T. (N.S.) 251; 26 W. R. 366; 42 J. P. 7.

As to the appropriation of penalties under local Acts applying to boroughs, see *Alison* v. *Charlesworth*, 49 J. P. 294; *Alison* v. *Hall*, 4 T. L. R. 524.

Duties of clerk of peace as to fines and forfeitures.

222. Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, "for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated": and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

This section cannot apply to county councils, for in all counties, except London, the clerk of the council and the clerk of the peace will be the same person. See the Local Government Act, s. 83, *ante*, p. 158.

Service of summons or warrant.

223. Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles from the borough, and, within those limits, shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed.

It is not clear whether the incorporation of this section with the Local Government Act (if it is incorporated) will have the effect of enabling the process of county justices to be executed within seven miles of the county without being backed. The Local Government Act, s. 75, *ante*, p. 141, provides that "for the purpose of the provisions of this Act with respect to county councils, and to the chairman, etc., of such councils, and otherwise for the purpose of carrying this Act into effect," the several parts of the Municipal

Corporations Act, 1882, shall apply as if therein re-enacted with such modifications as are necessary to make them applicable to the said councils and their chairmen, etc.- It cannot be said that the application of the above section to the process of county justices fulfils the purpose thus stated in any way, and if the statement of the purpose limits the extent of the incorporation of the Municipal Corporations Act, the above section will not apply to the process of county justices. It will be prudent to refrain from acting on the above section in counties until the point has been judicially determined.

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Procedure in penal actions against corporate officers.

224.—(1.) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose (*a*).

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs (*b*).

(3.) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4.) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

(*a*) See ss. 41 and 219, and the notes thereto, *ante*, pp. 278, 314. An action under this section to recover a fine from any person for acting in a corporate office without being qualified is not a "proceeding" to which the Public Authorities Protection Act, 1893, applies, and this section is not therefore repealed by that Act. *Humphries* v. *Wormwood*, 64 L. J. Q. B. 437.

(*b*) Security must be given, if demanded.

Quo warranto and mandamus.

225.—(1.) An application for an information in the nature of a quo warranto against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election (*a*).

(2.) In the case of such an application, or of an application for a mandamus to proceed to an election of a corporate officer (*b*), the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified for making the application.

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

Sect. 225 (4).

(4.) The applicant shall deliver with the notice a copy of the affidavit whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the rule for the information or mandamus absolute.

(7.) The court may, if it thinks fit, direct that any issue of fact on an information be tried by a jury in London or at Westminster.

(8.) The court may, if it thinks fit, direct that any writ of mandamus issued shall be peremptory in the first instance.

(*a*) See the Crown Office Rules, 51—59, some of which are identical with the provisions of this section. It is provided by s. 73, *ante*, p. 293, that every municipal election not called in question within twelve months after the election, either by election petition or by *quo warranto*, shall be deemed to have been to all intents a good and valid election. In respect of all or nearly all the grounds upon which an election can be questioned the only remedy, as we have seen by s. 87, is election petition. The text deals with disqualification after election, and for this the proper mode of questioning the right to sit and act is by *quo warranto*. The proceedings must be taken within twelve months from the date of the disqualification, though the disqualification may continue to the time of the proceedings ; but after the twelve months the person disqualified may be liable to penalties under s. 41, *ante*, p. 278. See *Ex parte Birkbeck*, L. R. 9 Q. B. 256 ; *De Souza* v. *Cobden*, *ante*, p. 278. Where an office is full *de facto* the court will not grant a *mandamus* for a new election until the vacancy has been judicially determined by *quo warranto*. *R.* v. *Phippen*, 7 A. & E. 966.

(*b*) See *R.* v. *Phippen*, *supra*.

Provisions for protection of persons acting under Act.

226.—(1.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2.) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment ; but this provision shall not affect costs on any injunction in the action (*a*).

(3.) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine or otherwise (*b*).

(*a*) Sub-sections (1) and (2) appear to be superseded, though not expressly repealed, by the similar provisions contained in the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), *post*. As to actions for penalties in relation to lists and elections, see s. 75, *ante*, p. 294. As to actions for fines incurred by corporate officers, see s. 224, *ante*, p. 317. The provision in the text is evidently applicable to proceedings other than those under these sections. Under the text, notice of action is not necessary, though it is required under s. 224.

(*b*) A similar provision is contained in the Local Government Act, s. 66, *ante*, p. 128. The text is, however, wider in its operation, as it applies to all officers.

Power for borough constables to take bail.

227.—(1.) Where a person charged with a petty misdemeanor is brought without the warrant of a justice into the custody of a borough constable during his attendance at a watch-house in the borough, at any time (by day or night) at which a justice is not actually sitting for the public administration of justice at the justices' room or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognizance conditioned for his appearance for examination within two days before a justice in the borough at some time and place therein specified (*a*).

(2.) A recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof as if taken before a justice (*b*).

(3.) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognizance, and of his surety or sureties, if any, with the condition of the recognizance, and the sums acknowledged (*c*).

(4.) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear (*d*).

* * * * *

(7.) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognizance to such further time as he appoints.

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(8.) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognizance for his appearance before a justice shall be discharged without fee.

(*a*) For the reason stated in the note to s. 223, *ante*, p. 316, it is doubtful whether this provision is now extended to counties by the Local Government Act, s. 75, *ante*, p. 141. It is more extensive in its operation than s. 38 of the Summary Jurisdiction Act, 1879, but it does not repeal that section. See 47 & 48 Vict. c. 43, s. 9.

(*b*) The recognizance may be enforced under s. 9 of the Summary Jurisdiction Act, 1879.

(*c*) It will now be necessary for county constables to have this book if the section applies to counties.

(*d*) Sub-sections (5) and (6) are repealed by the Summary Jurisdiction Act, 1884, which substitutes the corresponding provisions of the Summary Jurisdiction Acts. The repealed sub-sections related to the forfeiture and enforcing of the recognizance, as to which see note (*b*), *supra*.

PART XIII.—General.

Boundaries.

Boundaries of boroughs and transfer of parts to counties.

228.—(1.) Every place at the commencement of this Act included within each borough then existing, and no other place, shall be part of the borough, and in each borough then existing which is a county of itself shall be part of that county and of no other, as if this Act had not been passed.

(2.) Where under the Municipal Corporations Act, 1835, or any Act amending it, any such county or borough does not, at the commencement of this Act, include a place which, before the passing of the Municipal Corporations Act, 1835, was part thereof, that place shall continue to be part of the county wherein it is situate, or with which it has the longest common boundary, as if this Act had not been passed.

(3.) But nothing in this Act shall prevent any gaol, house of correction, lunatic asylum, court of justice, or judges' lodgings, which at the passing of the Municipal Corporations Act, 1835, was, and at the commencement of this Act is, taken to be, for any purpose in any county, from being still, for that purpose, taken to be in that county, as if this Act had not been passed.

(4.) Any gaol, court, depôt for arms, and any land thereto belonging, which at the commencement of this Act is parcel of a county shall continue to be parcel of the county, and under the exclusive jurisdiction of the authorities of the county, as if this Act had not been passed.

(5.) Nothing in this Act shall be construed to affect the assessments of the land tax or assessed taxes, as those assessments exist

at the commencement of this Act, or to extend or diminish the jurisdiction of any commissioners of those taxes, as such commissioners then exist ; but all lands, and all parishes, parts of parishes, and places shall continue to be charged as at the commencement of this Act towards the land tax charged on the county or other district whereof at the commencement of this Act they are part, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as if this Act had not been passed. Sect. 228 (5).

It is provided by the Local Government Act, s. 75, sub-s. (16), *ante*, p. 145, that nothing in the Municipal Corporations Act, as applied by that section, shall apply any of the provisions of the Municipal Corporations Act, 1882, with reference to boundaries. Consequently the above section will not apply to counties. For the provisions of the Local Government Act, 1888, as to boundaries, see Part III. of that Act, *ante*, p. 104 ; and see also Part III. of the Local Government Act, 1894, *post*.

Adjustment between boroughs and counties on change of boundaries.

229. If any place, which under the Municipal Corporations Act, 1835, or any Act amending it, ceased to be included in a borough or county of a town or city, was before the passing of the Municipal Corporations Act, 1835, liable to contribute to any rate for satisfying any lawful debt to which the ratepayers of that borough or county were then liable, and if after the commencement of this Act any difference arises concerning the proportion of that debt to be contributed in respect of that place, the Secretary of State, on the application of the council, or of the chairman of a public meeting of the ratepayers of the place, may appoint by writing under his hand a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion aforesaid, if any ; and the arbitrator shall assess the costs of the arbitration, and direct by whom and in what proportion and out of what fund they shall be paid ; and the rate aforesaid shall continue to be levied by warrant of the council and to be paid by the place aforesaid to the treasurer of the borough, as if the Municipal Corporations Act, 1835, or any Act amending it, or this Act, had not been passed, until the proportion aforesaid is satisfied, and no longer.

The above section does not apply to counties. See the note to last section.

The Local Government Act, s. 54, *ante*, p. 108, deals with future alterations of the boundaries of counties and boroughs, and s. 62, *ante*, p. 119, provides for the due adjustment of property and liabilities upon any such alteration.

Time.

Computation of time.

230.—(1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of

Sect. 230 (1). that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day ; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified (*a*).

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified (*a*).

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time (*b*).

(*a*) Thus, if something is to be done within ten days after the 1st of a month, the last day for doing it would be the 11th, unless that were Sunday, or one of the days specified, in which case the act would be done on the 12th.

(*b*) This provision will not apply to the nine days' notice of election under s. 54, *ante*, p. 285, nor to the seven days mentioned in Sched. 3, Part. II., r. 7, *post*.

Distance.

Measurement of distances.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

This is a useful provision, otherwise the Ordnance map could not have been used.

Notices.

Notices on town hall.

232. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

In applying this section to counties and electoral divisions of counties some modification must be made. No doubt, if there were public offices in the division, the notice might be published there, as by so doing the above section would be satisfied, whether such offices were a town hall within the meaning or this section as applied, or a conspicuous place in the division.

See the Local Government Act, s. 75 (7), *ante*, p. 143, as to the substitution of a place for the town hall for hearing objections to nomination papers.

Inspection and Copies. Sect. 233 (1).

Inspection of documents.

233.—(1.) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom (*a*).

(2.) A burgess may make a copy of or take an extract from an order of the council for the payment of money (*b*).

(3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy (*c*).

(5.) The Freemen's Roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy.

(6.) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7.) If a person having the custody of any document in this section mentioned—

(a.) Obstructs any person authorized to inspect the same in making such inspection thereof as in this section mentioned ; or

(b.) Refuses to give copies or extracts to any person entitled to obtain the same under this section ;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

(*a*) It would seem that while a burgess is not entitled to inspect minutes of a committee, he is entitled to inspect the epitome of such minutes as presented to the council for their approval under s. 22 (2). *Williams* v. *Manchester (Mayor, etc., of)*, 45 W. R. 412 ; 13 T. L. R. 299. As to the right of inspection by the solicitor of a burgess, see *R.* v. *Wimbledon Urban District Council*, 14 T. L. R. 146.

(*b*) Sub-sections (1) and (2) will apply to county councils with the substitution of "county elector" for "burgess."

As to the minutes of the council, see s. 22, *ante*, p. 260, and Sched. 2, r. 12, *post*, p. 337.

As to orders for the payment of money, see the Local Government Act, s. 80, *ante*, p. 154.

(*c*) It is provided by the Local Government Act, s. 71, *ante*, p. 136, that the provisions of the Municipal Corporations Act, 1882, as to the accounts of the treasurer of a borough and to the inspection and abstract thereof shall apply to the accounts of a county council.

Fees.

Tables of fees to be posted.

234. The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorized to be taken by

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the clerk of the peace (if any) for the borough, by the clerk to the justices (if any) for the borough, and by the registrar and officers of the borough civil court (if any), to be posted conspicuously in the following places :

(a.) The room where the business of the town clerk's office is transacted ;

(b.) The room (if any) where the justices of the borough sit for transacting their business ;

(c.) The room (if any) where the court of quarter sessions of the borough is held ; and

(d.) The room (if any) where the borough civil court is held.

As to the tables of fees to be taken by justices' clerks generally, see 14 & 15 Vict. c. 55, and 40 & 41 Vict. c. 43.

It would appear that this section will apply in counties except in so far as it refers to the borough civil court. See s. 75 of the Local Government Act, *ante*, p. 141.

Seals and Signatures.

Forgery.

235. If any person forges the seal or signature affixed or subscribed to a bye-law made under this Act, or the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

As to the authentication of bye-laws, see s. 24, *ante*, p. 265. As to the signature of minutes, see s. 22, sub-s. (5), *ante*, p. 260.

Applications to Treasury.

Notice of application to and correspondence with Treasury.

236.—(1.) Where the council intend to apply to the Treasury for their approval of any sale, loan, or other financial arrangement under this Act, notice of the intention to make the application shall be fixed on the town hall one month at least before the application, and a copy of the intended application shall during that month be kept in the town clerk's office, and be open to public inspection.

(2.) If the Treasury either refuse their approval or grant it conditionally or under qualifications, notice of the correspondence between the Treasury and the council shall forthwith and during one month be fixed on the town hall, and a copy of the correspondence shall during that month be kept in the town clerk's office, and be open to public inspection.

It is provided by the Local Government Act, s. 72, *ante*, p. 140, that after the appointed day the Local Government Board shall exercise, as regards any county borough, or other borough, the powers conferred by Part V. of the Municipal Corporations Act, 1882, relating to corporate property and liabilities,

as respects the approval of loans and the alienation of property and other matters therein mentioned, and that part shall, as respects any transactions commenced after the appointed day, be construed as if "Local Government Board" were throughout that part substituted for "Treasury."

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NOTE.

The above section will apparently apply to all applications to the Local Government Board, whether by a borough council under this Act, or by a county council under the provisions of the Local Government Act as to property, borrowing, etc.

As to fixing the notice on the town hall, see s. 232, *ante*, p. 322.

The town clerk's office will, in counties, be the office of the clerk of the council.

Deputy.

237. No defect in the appointment of a deputy under this Act shall invalidate his acts.

Acts of deputy not to be invalidated by defect in appointment.

This section will apply to a deputy clerk of the peace appointed under the Local Government Act, ss. 83 or 118; a deputy chairman of the London County Council (*ib.* s. 88); a deputy returning officer (*ib.* s. 75).

Overseers.

238.—(1.) Every matter by the Municipal Corporations Acts directed to be done by overseers may be lawfully done by the major part of them.

Notices to and acting of overseers.

(2.) Any notice by the Municipal Corporations Acts required to be given to overseers may be delivered to any one of them, or left at his place of abode, or at his office for transacting parochial business.

The expression "Municipal Corporations Acts" is defined by s. 7 (1) of this Act to mean "this Act and any Act to be passed amending this Act."

The chief duties of the overseers under this Act as applied by the Local Government Act, 1888, consist in the preparation of the burgess lists and lists of voters, etc., under Part III., as amended by the County Electors Act.

An assistant overseer may also be counted as one of the majority. See *Baker* v. *Locke*, 11 Jur. (N.S.) 65; 34 L. J. C. P. 49; 18 C. B. (N.S.) 52.

Declarations and Oaths.

239.—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

Power to administer oaths, etc.

(2.) Nothing in this Act in any case shall require or authorize the taking or making of any oath or declaration that would not have been required or authorized under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been

31 & 32 Vict. c. 72.

Sect. 239 (2). passed, or interfere with the operation of the Promissory Oaths Act, 1868.

As to the declaration on acceptance of office, see s. 35, *ante*, p. 273, and Sched. 8, *post*. This declaration may be made before two members of the council or the town clerk.

As to the oaths to be taken by the chairman of the county council before acting as a justice of the peace, see the Local Government Act, s. 2, *ante*, p. 4.

Forms.

Forms in schedule.

240. The forms in the Eighth Schedule, or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

The only part of the Eighth Schedule which is incorporated with the Local Government Act is Part I., which is set out, *post*.

Misnomer or Inaccurate Description.

Misnomer or inaccurate description not to hinder.

241. No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood.

Where in a voting paper *Gonville Place* was stated as the address of a voter, whereas his real address was *Newmarket Road*, it was held that this inaccuracy was not cured by the corresponding provisions of 5 & 6 Will. 4, c. 76, s. 142. *R.* v. *Coward*, 16 Q. B. 819; and see *R.* v. *Deighton*, 5 Q. B. 896; 13 L. J. Q. B. 241; 8 Jur. 686; *R.* v. *Hammond*, 17 Q. B. 772; 21 L. J. Q. B. 153; 16 Jur. 194; *R.* v. *Avery*, 18 Q. B. 576; 21 L. J. Q. B. 153; 17 Jur. 194.

Joseph C., a person entitled to vote at a municipal election, was by mistake entered on the burgess roll as James C. He voted by the name of James C. On motion for a *quo warranto*, the vote was objected to on the ground that C. was not entitled to vote, and had fraudulently personated a person entitled to vote. It was held that neither objection was sustained. And, *semble*, that if the objection had been that C. had voted in a wrong name, and was not rightly entered on the burgess roll, this objection could not have been sustained, but that the misnomer would have been cured under 5 & 6 Will. 4, c. 76, s. 142. *R.* v. *Thwaites*, 1 E. & B. 704; 22 L. J. Q. B. 238; 17 Jur. 712.

A voting paper signed W. J., of K. street, was rejected on the ground that the qualification of W. J. on the burgess roll was described as "house in M. street." It was shown by affidavits that K. and M. streets intersected; that the house in question was the corner house; that it was one house, with a street door in each street, consisting of what had formerly been two distinct houses, one in each street, and one of them being the house in M. street. It was held that having regard to 5 & 6 Will. 4, c. 76, s. 142, the description was such as to be commonly understood, and that the vote was improperly rejected. *R.* v. *Gregory*, 1 E. & B. 600; 22 L. J. Q. B. 120; 17 Jur. 272.

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NOTE.

Voting papers were tendered signed "A. B., voting for property situate in the parish of C." They were rejected, and the rejection altered the majority. In proceedings by *quo warranto*, it was admitted that the borough consisted of two parishes, of which C. was one; that though there were streets and lanes in the borough, the description in the voting papers was such as to be commonly understood, and that the boundaries of the parish were well known and defined. It was held that the fault, if there was one, was cured by 5 & 6 Will. 4, c. 76, s. 142. *R.* v. *Spratley*, 6 E. & B. 363; 25 L. J. Q. B. 257; 2 Jur. (N.S.) 735.

A voting paper contained the christian name and surname of the candidate and his place of abode, but no description (such as is required by Sched. 3, Part II. r. 5, *post*). It was held that this was not an inaccurate description, but a total omission of the description of the candidate, and was not cured by 5 & 6 Will. 4, c. 76, s. 142. *R.* v. *Tugwell*, L. R. 3 Q. B. 704; 37 L. J. Q. B. 275; 16 W. R. 1039.

At an election of councillors voting papers designated the person voted for by the initial of his christian name. It was held that this was a misnomer and cured by 5 & 6 Will. 4, c. 76, s. 142. *R.* v. *Plenty*, L. R. 4 Q. B. 346; 38 L. J. Q. B. 205; 20 L. T. (N.S.) 521; 17 W. R. 792. But in a later case it was held that a similar use of initials in a nomination paper was not cured, for s. 142 did not extend to a nomination paper, which was unknown when 5 & 6 Will. 4, c. 76, was passed. *Mather* v. *Brown*, 1 C. P. D. 596; 45 L. J. C. P. 547; 34 L. T. (N.S.) 869; 24 W. R. 736.

A mistake in the number on the burgess roll as stated in a nomination paper was held not cured by 35 & 36 Vict. c. 33, s. 13, and 41 & 42 Vict. c. 26, s. 41; *Gothard* v. *Clark*, 5 C. P. D. 253; 49 L. J. C. P. 474; 42 L. T. (N.S.) 776; 29 W. R. 102; 44 J. P. 587.

A nomination paper at the election of a town councillor pursuant to the Municipal Elections Act, 1875, was held sufficiently to state the Christian name (William) of the person nominated by the abbreviation "Wm." *Henry* v. *Armitage*, 12 Q. B. D. 257; 33 L. J. Q. B. 111; 50 L. T. (N.S.) 4; 32 W. R. 192; 48 J. P. 424.

A nomination paper was subscribed with the full and correct name of Charles Arthur Burman as an assenting burgess; but his name was erroneously entered on the burgess roll as Charles Burman only. It was held that the defect was not cured by the text, the words "commonly understood" meaning commonly understood by any person comparing the nomination paper and the burgess roll. *Moorhouse* v. *Linney*, 15 Q. B. D. 273; 53 L. T. (N.S.) 343; 33 W. R. 704; 49 J. P. 471.

But in a case where a nomination paper was subscribed by three of the assenting burgesses, "Edwin J. Hooper," "W. E. Waller," and "R. Turner," whose names appeared on the burgess roll as "Edwin John Hooper," "William E. Waller," and "Robert Turner" respectively, it was held that the nomination paper had been duly subscribed by those persons. *Bowden* v. *Besley*, 21 Q. B. D. 309; 57 L. J. Q. B. 473; 59 L. T. (N.S.) 219; 36 W. R. 839. In this case it will be observed that the signatures and surnames on the burgess roll, though not identical, were not inconsistent with each other.

A nomination paper at a county council election was signed by a nominator "James Sykes, junr." The name James Sykes appeared on the register of county electors, but without the addition of "junior." It appeared that the nominator was generally known as James Sykes, junior, and that was his usual signature. It was held that the nomination paper, being signed with the ordinary signature of the nominator, was valid. *Gledhill* v. *Crowther*, 23 Q. B. D. 136; 58 L. J. Q. B. 327; 60 L. T. (N.S.) 866; 53 J. P. 677.

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NOTE.

A nomination paper was subscribed with the correct name of Henry D. Davenport, as an assenting burgess, but his name was erroneously stated on the burgess roll as Davenport, Henry D. Evereux. *Held*, that the nomination paper was not invalid. *Harding* v. *Cornwall*, 60 L. T. (N.S.) 959.

See also s. 72, *ante* p. 293, s. 13 of the Ballot Act, 1872, *ante*, p. 213, and notes.

Substitution in Former Acts.

Provision for references in unrepealed enactments to 5 & 6 Will. 4, c. 76, etc.

242.—(1.) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2.) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in connection therewith, such provision of this Act as is also mentioned in connection therewith.

(3.) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act, or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4.) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

The effect of this section in incorporating s. 14 of the Judicature Act, 1881 (44 & 45 Vict. c. 68), as to appeals to the Court of Appeal from the decision of a divisional court upon a question of law in a municipal election petition, has been stated in the note (*f*) to s. 93 (7), *ante*, p 305.

Short titles of Acts partly repealed.

243. Such of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned.

Returning Officers at Parliamentary Elections.

Mayor of certain boroughs to be returning officer in parliamentary elections.

244.—(1.) In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections; but this provision shall not extend to the borough of Berwick-upon-Tweed.

(2.) If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer.

(3.) If when a mayor is required to act as returning officer the mayor is absent, or incapable of acting, or there is no mayor, the council shall forthwith choose an alderman to be returning officer. Sect. 244 (3).

This section does not apply to counties.

Disfranchised Parliamentary Boroughs.

245. Where a borough has, in pursuance of the Representation of the People Act, 1867, or of any Act passed in the session of the thirty-first and thirty-second years of the reign of Her Majesty, ceased to return a member to serve in Parliament, and the persons entitled to vote for the member or members formerly returned by the borough were by law electors for any other purpose, the burgesses of the borough shall be electors for that purpose, and shall in all respects, as regards that purpose, be substituted for the persons so entitled to vote. Electors in disfranchised boroughs. 30 & 31 Vict. c. 102.

This section cannot apply to a county.

Licensing.

246. In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, "to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England," the expressions "town corporate," "county or place," and "division or place," include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough direct their precept under that Act. Explanation of terms "town corporate," etc., in Licensing Act.

This section applies only to boroughs.

Freedom of Trading.

247. Notwithstanding any custom or bye-law, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough. Right of free trading in boroughs.

Bye-laws cannot be made in restraint of trade. See the cases cited in the notes to s. 23, *ante*, p. 264.

This section is in fact a proviso to s. 23, and will apply to county bye-laws as well as to those of boroughs. See s. 16 of the Local Government Act, *ante*, p. 42.

Cinque Ports.

248.—(1.) The boroughs of Hastings, Sandwich, Dover, Hythe, being four of the Cinque Ports, and the borough of Rye, are in this section referred to as the five boroughs. Special provisions as to certain of the Cinque Ports.

(2.) The jurisdiction, powers, and authorities of the court of quarter sessions, recorder, coroner, and clerk of the peace for each

Sect. 248 (2). of the five boroughs shall extend to the non-corporate members and liberties thereof, and to such corporate members thereof as have not a separate court of quarter sessions.

(3.) The jurisdiction, powers, and authorities of the persons constituted justices within and throughout the liberties of the Cinque Ports by virtue of their commission, shall extend to all places being within the limits of the five boroughs or of their members or liberties, corporate or non-corporate, and not being within the limits of a borough having a separate commission of the peace.

(4.) The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licenses or authorities to persons to keep inns, ale-houses, or victualling houses, or to sell exciseable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively, not being within the limits of a borough having a separate commission of the peace.

(5.) The non-corporate members and liberties of the five boroughs and such corporate members thereof as have not a separate court of quarter sessions shall be charged by the respective courts of quarter sessions of the five boroughs with a due proportion of all those expenses of the five boroughs, to the payment whereof rates in the nature of county rates are applicable; and such rates may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the Municipal Corporations Act, 1835, under any enactment then in force, but subject to the operation of any subsequent enactment affecting the same.

(6.) A due proportion of inhabitant householders to serve as grand jurors and jurors at the respective courts of quarter sessions of the five boroughs shall be summoned by the clerks of the peace thereof from the non-corporate members and liberties thereof, and such corporate members thereof as have not a separate court of quarter sessions; and the attendance of such jurors shall be enforced, and their defaults punished, in the manner by this Act directed with respect to jurors in boroughs.

32 & 33 Vict. c. 53. (7.) Nothing in this section shall effect the Cinque Ports Act, 1869, or the Acts therein recited.

The Local Government Act, 1888, s. 48, sub-s. (4), *ante*, p. 103, provides that "the Cinque Ports and two ancient towns and their members shall for all purposes of the county council and of the powers and duties of quarter sessions and justices out of sessions under this Act form part of the county in which they are respectively situate, without prejudice nevertheless to the position of any such port, town, or member as a quarter sessions borough under the Municipal Corporations Act, 1882, as amended by this Act, and

without prejudice to the existing privileges of such ports, towns, and members as respects matters which are not affected by this Act." Sect. 248. NOTE.

Cambridge.

249.—(1.) It shall be lawful for the Queen, from time to time, by her commission of the peace for the borough of Cambridge, to constitute the Vice-Chancellor for the time being of the University of Cambridge a justice for that borough. Vice-Chancellor of Cambridge.

(2.) He shall not, by reason of being so constituted, have any greater authority as to the grant of licences to alehouses than any other justice named in the commission.

(3.) But nothing in this section shall affect the rights and privileges which the Vice-Chancellor lawfully has or enjoys, or might have lawfully had or enjoyed if he were not so constituted a justice.

Savings.

250.—(1.) Nothing in this Act shall prejudicially affect any charter granted before the commencement of this Act, or take away, abridge, or prejudicially affect any of the rights, powers, privileges, estates, property, duties, liabilities, or obligations vested in or imposed on any municipal corporation existing at the commencement of this Act, or in or on the mayor, or the council of a borough then existing, or any members or committee of the council, by the incorporation of the inhabitants of the borough, or by transfer from any other authority, or otherwise; but every such charter shall continue to operate, and every such corporation shall continue to have perpetual succession and a common seal, and to be capable in law by the council to do and suffer all acts which at the commencement of this Act they and their successors respectively may lawfully do or suffer, and the corporation and all members and officers thereof and their sureties, and every such mayor and every such council and committee, and every such officer, shall continue to have, enjoy, and be subject to the like rights, powers, offices, privileges, estates, property, duties, liabilities, and obligations as if this Act had not been passed, without prejudice, nevertheless, to the operation of the repeal of enactments by this Act, and to the other express provisions of this Act. Saving for existing corporations.

(2.) Nothing in this Act shall alter the boundaries of any borough existing at the commencement of this Act, or the number, apportionment, or qualification of the aldermen or councillors thereof, or the division thereof into wards.

(3.) Nothing in this Act shall affect the right of the council of a borough to collect by their own officers the borough rate and watch rate, or either of them, where, at the commencement of this

Sect. 250 (3). Act, they are authorized by law to so collect, and are so collecting, the same.

(4.) Nothing in this Act shall alter the respective jurisdiction of county and borough justices.

(5.) Nothing in this Act shall affect the right of any borough named in Schedule (A.) to the Municipal Corporations Act, 1835, to have a separate commission of the peace.

Compare the provisions of the Local Government Act, s. 125, *ante*, p. 202.

Saving for local Acts.

251. Nothing in this Act shall alter the effect of any local Act of Parliament.

The Local Government Act, s. 75, sub-s. (16), *ante*, p. 145, provides that nothing in the Municipal Corporations Act, 1882, as applied by that section, shall apply the provisions of s. 251, *supra*. Section 125 of that Act, *ante*, p. 202, contains a saving for local Acts.

Saving for Prison Acts. 28 & 29 Vict. c. 126. 40 & 41 Vict. c. 21.

252. Nothing in this Act, except the provision referring to the Ninth Schedule, shall affect the Prison Act, 1865, or the Prison Act, 1877, and nothing in this Act shall affect the Act of the session of the fifth and sixth years of Her Majesty, chapter ninety-eight, "to amend the laws concerning prisons," or revive or restore any enactment which, being contained in that Act, or in the Municipal Corporation (Justices) Act, 1850, or in any other Act, is virtually repealed or superseded by the Prison Act, 1865, or the Prison Act, 1877.

13 & 14 Vict. c. 91.

Saving for military and naval officers, etc.

253. Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments.

See the note to s. 34, *ante*, p. 273.

Saving for dockyards, barracks, etc.

254. Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government of any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein or the inhabitants thereof liable to any rate for watching, paving, or lighting.

Saving as to Admiralty.

255. Nothing in this Act shall affect the authority of justices vested in the Commissioners for executing the office of Lord High Admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

Saving for Lord Warden.

256. Nothing in this Act shall affect the jurisdiction and office of the Lord Warden in his office of Admiral of the Cinque Ports.

257. Nothing in this Act shall— Sect. 257 (1).

(1.) Affect the rights, privileges, duties, or liabilities of the chancellor, masters, and scholars of the Universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise ; or Saving for universities.

(2.) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those universities respectively ; or

(3.) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities ; or

(4.) Compel any resident member of either of those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge ; or

(5.) Authorize the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act ; or

(6.) Authorize the transfer of any rights or liabilities by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the University of Cambridge ; or

(7.) Affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

This section does not apply to counties. See the Local Government Act, s. 75, sub-s. (16), *ante*, p. 145.

258. Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate. Saving for jurisdiction over cathedral precincts.

259. Nothing in this Act shall prejudicially affect Her Majesty's royal prerogative ; and the enabling provisions of this Act shall be deemed to be in addition to, and not in derogation of, the powers exerciseable by Her Majesty by virtue of her royal prerogative. Saving for royal prerogative.

260.—(1.) The repeal effected by this Act shall not affect— Saving as to repealed enactments.

(a.) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act ; or

Sect. 260 (1).

(b.) Any proceeding or thing pending or in course of being done at the commencement of this Act under any enactment repealed by this Act; or

(c.) Any jurisdiction or practice established, confirmed, or transferred, or right or privilege acquired or confirmed, or duty or liability imposed or incurred, or compensation secured by or under any enactment repealed by this Act; or

(d.) Any disability or disqualification existing at the commencement of this Act under any enactment repealed by this Act; or

(e.) Any fine, forfeiture, punishment, or other consequence incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment repealed by this Act; or

(f.) The institution or the prosecution to its termination of any legal proceeding or other remedy for ascertaining, enforcing, or recovering any such jurisdiction, practice, right, privilege, duty, liability, compensation, disability, disqualification, fine, forfeiture, punishment, or consequence as aforesaid; or

(g.) The terms on which any money has been borrowed before the commencement of this Act under any enactment repealed by this Act.

(2.) The repeal effected by this Act shall not extend to Scotland or Ireland, and shall not, as regards the enactments described in Part II. of the First Schedule, operate in respect of any place other than a borough to which this Act applies, and shall not revive or restore any statute, law, usage, custom, royal or other charter, grant, letters patent, bye-law, jurisdiction, office, right, title, claim, privilege, liability, disqualification, exemption, restriction, practice, procedure, or other matter or thing abolished by the Municipal Corporations Act, 1835, or not in force or existing at the commencement of this Act, or otherwise affect the past operation of any enactment repealed by this Act.

(3.) All elections, declarations, appointments, bye-laws, rates, tables of fees, and regulations made, or pending, or in the course of being made, and all other things done, or pending, or in the course of being done, under the Municipal Corporations Act, 1835, or any other enactment repealed by this Act, before or at the commencement of this Act, shall for the purposes of this Act be of the like effect as if they had been made or done, or were pending, or in the course of being made or done, under this Act, and shall, as far as may be requisite for the continuance, validity, and effect thereof, be deemed to have been made or done, or may be carried on and be made or done, as the case may require, under this Act.

SECOND SCHEDULE.

MEETINGS AND PROCEEDINGS OF COUNCIL.

1. The council shall hold four quarterly meetings in every year for the transaction of general business.

This schedule is incorporated by s. 75 of the Local Government Act, 1888, *ante*, p. 141.

General business is presumably business prescribed by the Act itself or some other Act relating to the council. Any other business must be specified in the summons to attend the meeting. See r. 8, *post*.

County councils must hold quarterly meetings as herein provided.

It may be added that, by the Local Government Act, s. 2, *ante*, p. 1, county councils are to conduct their proceedings in like manner as the council of a borough, and that by s. 22 (1) *ante*, p. 260, the rules in this schedule "shall be observed."

2. The quarterly meetings shall be held at noon on each ninth of November, and at such hour on such other three days before the first of November then next following as the council at the quarterly meeting in November decide or afterwards from time to time by standing order determine.

This provision is superseded by s. 1 of the County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), *post*, which enacts that "the sixteenth day of March or such other day within ten days after the ordinary day of retirement of councillors" (viz., March 8th) "as the council of any county may from time to time fix for that county shall, in substitution for the ninth day of November, be the ordinary day of election of the chairman and of the aldermen, and the day for holding a quarterly meeting, and if the county council fix any hour for the quarterly meeting that hour shall be substituted for the hour specified in the Municipal Corporations Act, 1882."

Noon means 12 o'clock by Greenwich time. 43 & 44 Vict. c. 9.

At the quarterly meeting in March the first business to be done will be the election of the chairman (s. 61, *ante*, p, 289); then the election of the aldermen, (s. 60, *ante*, p. 288).

As to the standing orders, see r. 13, *post*.

3. The mayor may at any time call a meeting of the council.

The chairman of a county council will have this power.

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to him, any five members of the council may forthwith, on that refusal, call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

This rule provides for two cases :—(1.) if the mayor (or chairman) signifies his refusal to call a meeting; (2) if he does not refuse, but does not in fact call a meeting within seven days. The seven days are to be reckoned exclusive of Sunday, Christmas Day, Good Friday, Easter Monday or Tuesday, or public fast, humiliation, or thanksgiving days. See s. 230, *ante*, p. 321.

5. Three clear days at least (*a*) before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall (*b*). Where the meeting is called by members of the council, the notice shall specify the business proposed to be transacted thereat (*c*).

(*a*) This means that three clear days must intervene, not counting either the day of giving the notice or the day of the meeting. *R.* v. *Shropshire JJ.*, 8 A. & E. 173; *Young* v. *Higgon*, 6 M. & W. 49.

(*b*) See s. 232, *ante*, p. 322. It will probably be a sufficient compliance with this provision if the notice is affixed to the building at which meetings of the county council are usually held.

(*c*) When the meeting is summoned by the mayor (or chairman) the business need not be specified in this notice.

Schedule 2.

6. Three clear days at least (*a*) before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat (*b*), and signed by the town clerk (*c*), shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council, three clear days at least before the meeting.

(*a*) See r. 5, note (*a*), *supra*.

(*b*) This notice must in every case specify the business.

(*c*) The clerk of the council must sign the summons calling a meeting of the county council.

7. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

This rule is evidently intended to obviate any difficulty which might arise in case of the accidental omission of notice to any member. But it may be doubted whether the failure to send notices to a considerable number of members might not affect the validity of the meeting.

8. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except, in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

A quarterly meeting may be adjourned to complete unfinished business, and in such cases no summons may be necessary; but no fresh business which may casually arise can be transacted at this adjourned meeting unless notice and summons have been issued as required by the preceding rules. *R.* v. *Grimshaw*, 10 Q. B. 747; 16 L. J. Q. B. 385; 11 Jur. 965.

As to the quarterly meetings, see the note to r. 1, *ante*, p. 335.

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the deputy mayor, being present, is not chosen, then such alderman, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman.

In county councils the chairman or vice-chairman will preside. In the event of their absence the councillors present must elect an alderman, or if there is no alderman present, a councillor, to preside.

See the note to s. 16, *ante*, p. 257, as to the vice-chairman.

In the absence of the chairman of the London County Council it is presumed that the deputy chairman appointed under s. 88 of the Local Government Act, *ante*, p. 166, will preside.

10. All acts of the council, and all questions coming or arising before the council, may be done and decided by the majority of such members of the council as are present and vote at a meeting held in pursuance of this Act, the whole number present at the meeting, whether voting or not, not being less than one-third of the number of the whole council.

The majority will be determined by the members voting, though others may be present and do not vote.

The quorum of a county council is one-fourth, instead of one-third. See the Local Government Act, s. 75, sub-s. (15), *ante*, p. 144.

A quorum of two-thirds is required for making bye-laws under s. 23, *ante*, p. 261.

Before parliamentary costs are incurred by a county council in opposing a Bill an absolute majority of the whole number of the council is required. See Local Government Act, s. 15 and note, *ante*, p. 41.

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

A difficulty might arise if the chairman were disqualified from voting by reason of his having a pecuniary interest in the subject of discussion. See s. 22, sub-s. (3), *ante*, p. 260. In such a case he could not, apparently, give an original or a casting vote.

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorized by this Act. **Schedule 2.**

As to the signature and authentication of the minutes, see s. 22, sub-s. (5), *ante*, p. 260.

As to forging the signature to any minutes, see s. 235, *ante*, p. 324.

13. Subject to the foregoing provisions of this schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

THIRD SCHEDULE.

* * * * *

PART II.

Rules as to Nomination in Elections of Councillors.

1. Every candidate for the office of councillor must be nominated in writing.

2. The writing must be subscribed by two burgesses of the borough or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination.

The burgesses must be enrolled in the burgess roll or ward roll, as the case may be. See s. 51, *ante*, p. 284.

This will apply to an election of county councillors, so as to render it necessary that the proposer, seconder, and persons assenting should be county electors for the electoral division.

A burgess was nominated in a paper signed by B. and H. as proposer and seconder, and by eight other assenting burgesses. After the nomination paper had been delivered to the town clerk it was altered in the absence of the seconder and assenting burgesses by striking out the name of B. as proposer and substituting that of G. another burgess. It was held that the nomination was invalid. *Harmon* v. *Park*, 7 Q. B. D. 369; 50 L. J. Q. B. 775; 45 L. T. (N.S.) 174; 45 J. P. 714.

The form of the nomination paper prescribed by this Act is contained in Sched. 8, Part II., which is not incorporated with the Local Government Act. Whether, having regard to s. 240, *ante*, p. 326, the form prescribed will apply to county councillors is not quite clear, but it will be advisable to follow it. Assuming that the form is to be followed with the necessary modifications the following points must be attended to:—1. The full christian names and surnames of the candidates must be stated. Initials for the christian names or any of them will render the nomination paper void (*Mather* v. *Brown*, *ante*, p. 327); though such abbreviations as Wm. for William, Fredk. for Frederick, or the like, are sufficient. *Henry* v. *Armitage*, *ante*, p. 327. 2. The abode and description of the candidate must be stated in the columns for these purposes. The omission of either is fatal. *R.* v. *Tugwell*, *ante*, p. 327. 3. The proposer and seconder and the assenting burgesses are merely required to sign or subscribe the paper; therefore they may sign using initials for their christian names. *Bowden* v. *Besley*, *ante*, p. 327. 4. But the names of the proposer, seconder, and assenting burgesses as signed by them must correspond to their names as entered on the burgess roll or division register. *Moorhouse* v. *Linney*, *ante*, p. 327. 5. The numbers on the burgess roll or division register of the proposer, seconder, and assenting burgesses must be stated accurately. *Gothard* v. *Clarke*, 5 C. P. D. 253; 49 L. J. Q. B. 474; 42 L. T. (N.S.) 776; 29 W. R. 402.

And see the other cases cited in the notes to ss. 72, 241, *ante*, and to r. 5, *infra*.

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more.

Where there were four vacancies, and a burgess subscribed four nomination papers which were delivered in time, and afterwards a fifth, which was also

Schedule 3.

delivered in time, it was held that the first four were valid. *Burgoyne* v. *Collins*, 51 L. J. Q. B. 335 ; 30 W. R. 923 ; 46 J. P. 390.

This rule will not apply to elections of county councillors, as there can never be more than one vacancy in an electoral division. See the Local Government Act, s. 2 (2) (*e*), *ante*, p. 3.

4. Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by this Act to be made.

As to the non-resident list, see the notes to s. 49, *ante*, p. 283.

The candidate must be enrolled and entitled to be enrolled. See *Flintham* v. *Roxburgh*, *ante*, p. 252.

5. The nomination paper must state the surname and other names of the candidate, with his abode and description.

The initials of the christian names of the candidates are not sufficient. *Mather* v. *Brown*, *ante*, p. 327.

But an abbreviation, such as Wm. for William, is sufficient. *Henry* v. *Armitage*, 12 Q. B. D. 257; 53 L. J. Q. B. 111 ; 50 L. T. (N.S.) 4 ; 32 W. R. 192 ; 48 J. P. 424. And see *R.* v. *Hammond*, *ante*, p. 326.

See the cases cited in the notes to r. 2, *ante*, and to s. 241, *ante*, p. 326.

Where the surname of a candidate called Miller was inserted in a nomination paper as Millar in accordance with the entry in the burgess roll it was held that that was a sufficient surname of the candidate. *Miller* v. *Everton*, 64 L. J. Q. B. 692 ; 72 L. T. (N.S.) 838 ; 59 J. P. 358.

6. The town clerk shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required, and shall, at the request of any burgess, fill up a nomination paper.

This duty will, in counties, devolve upon the returning officers. See the Local Government Act, s. 75, sub-s. (5), *ante*, p. 142.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder, at the town clerk's office, seven days at least before the day of election, and before five o'clock in the afternoon of the last day for delivery of nomination papers.

It is provided by the Local Government Act, s. 75, sub-s. (7), *ante*, p. 143, that some place fixed by the returning officer shall, except where the election is in a borough, be substituted for the town clerk's office, but such place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division.

The nomination paper must be delivered to the town clerk (or returning officer) by the candidate himself, or by his proposer or sender personally, and not by an agent. And the objection is one which is cognizable by the mayor, (or returning officer) under r. 9, *post*, whose decision allowing it may be questioned on a petition against the return of the successful candidate. *Monks* v. *Jackson*, 1 C. P. D. 683 ; 46 L. J. Q. B. 162 ; 35 L. T. (N.S.) 95 ; 41 J. P. 231.

8. The town clerk shall forthwith send notice of every such nomination to each candidate.

This duty will, in elections of county councillors, devolve upon the returning officer. See the Local Government Act, s. 75, sub-s. (5), *ante*, p. 142. The meaning of the rule is not very clear. The word "forthwith" appears to have reference to the time of receipt of the nomination papers mentioned in the last rule. If so it will be the duty of the returning officer at once to send to each candidate a notice of the nomination of himself and of all the other candidates.

9. The mayor shall attend at the town hall on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made in writing to a nomination paper.

This duty will devolve upon the returning officer in elections of county councillors. See the Local Government Act, s. 75, sub-s. (4), *ante*, p. 142. By the same section, sub-s. (7), some place fixed by the returning officer shall,

except where the election is in a borough, be substituted for the town hall, but such place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division. By sub-s. (16) (*g*) of the same section, *ante*, p. 146, schools and public rooms, may be used free of charge for hearing objections to nomination papers.

As the returning officer will hardly be able himself to perform the above duty in every electoral division, he must in many cases entrust it to his deputies, as he may under the Local Government Act, s. 75, sub-s. (3), *ante*, p. 142.

As to his power to revise the decisions of his deputies, see sub-s. (6) of the same section, and the note to s. 53 of this Act, *ante*, p. 285.

"It is not the duty of the returning officer to look out for objections in fact to nomination papers when handed in, much less to call the attention of a rival candidate to them." *Per* Lord RUSSELL OF KILLOWEN, C.J., in *R.* v. *Taylor*, 59 J. P. 393.

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered.

This rule does not apply to a case where there are several vacancies, and no burgess signs more than one nomination paper for any one candidate or more nomination papers than there are vacancies. *Line* v. *Warren*, 14 Q. B. D. 73, 548 ; 54 L. J. Q. B. 146 ; 52 L. T. (N.S.) 258, and see the note to r. 3, *supra*.

11. Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this schedule referred to as the candidate's representative) to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day for delivery of nomination papers.

12. Each candidate and his representative, but no other person, except for the purpose of assisting the mayor, shall be entitled to attend the proceedings before the mayor.

13. Each candidate and his represesentative may, during the time apppointed for the attendance of the mayor for the purposes of this schedule, object to the nomination paper of any other candidate for the borough or ward.

The time appointed is between two and four in the afternoon. See r. 9, *supra*.

14. The decision of the mayor shall be given in writing, and shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to reversal on petition questioning the election or return.

The mayor (or returning officer) has no power to deal with an objection as to the time of delivering the nomination papers, and if he does so his decision may be questioned on petition. *Howes* v. *Turner*, 1 C. P. D. 670 ; 45 L. J. Q. B. 550 ; 35 L. T. (N.S.) 58 ; 40 J. P. 680. Nor can he entertain an objection relating to the qualification of a candidate. *Pritchard* v. *Bangor* (*Mayor, etc., of*), *supra*, p. 286.

The mayor may properly deal with an objection that a nomination paper has not been delivered by the candidate or his proposer or seconder personally, as required by r. 7, *ante*, p. 338. *Monks* v. *Jackson*, 1 C. P. D. 683 ; 46 L. J. Q. B. 162 ; 35 L. T. (N.S.) 95 ; 41 J. P. 231.

If an objection to a nomination paper is improperly allowed, an election petition will lie on the ground that the candidates elected were not duly elected by a majority of lawful votes (s. 87 (1) (*d*), *ante*, p. 297). For if the nomination paper had not been held bad, the votes might have been differently given. *Budge* v. *Andrews*, 3 C. P. D. 510 ; 47 L. J. C. P. 586 ; 39 L. T. (N.S.) 166.

Where the mayor *bonâ fide* decides an objection, he cannot be made respondent to an election petition questioning the election on the ground of such decision. *Harmon* v. *Park*, 6 Q. B. D. 323 ; 45 J. P. 436.

An objection that the nominations of four persons were bad on the ground that one of the assenting burgesses had subscribed five nomination papers ought not to be entertained by the mayor. *Burgoyne* v. *Collins*, 30 W. R. 923 ; 46 J. P. 390.

Schedule 3.

15. The town clerk shall, at least four days before the date of election, cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed on the town hall, and, in the case of a ward election, in some conspicuous place in the ward.

This duty, in elections of county councillors, will devolve upon the returning officer. See the Local Government Act, s. 75, sub-s. (5). *ante*, p. 142. As to the substitution of a place for the town hall, see the same Act, s. 75, sub-s. (7), *ante*, p. 143.

The day of publishing the names under this rule is to be deemed the day of nomination (see the Local Government Act, s. 100, *ante*, p. 177); and the period between this day and the day of election is to be such period, not exceeding six days, as the returning officer may fix (*ib.*, s. 75, sub-s. (9), *ante*, p. 143).

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination.

As to the nomination of a person without his consent, see the Local Government Act, s. 75, sub-s. (16) (*c*), *ante*, p. 145.

For a case where an election was avoided on petition for want of the written consent hereby required, see *Brown* v. *Benn*, 53 J. P. 167; 5 T. L. R. 247.

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him, and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers: Provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll, although that roll is not yet completed.

The provisions of this Act relating to proceedings preliminary to elections are contained in Part III., *ante*, pp. 279 *et seq.*

Burgess roll and ward roll must be read as including roll of county electors and division register for the purposes of county elections.

Part III.

Modifications of the Ballot Act in its Application to Municipal Elections.

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and Rules 16 and 19 in the schedule to that Act, shall not apply in the case of a municipal election.

The provisions of the Ballot Act, 1872, as to the use of a room for taking the poll are contained in s. 6, *ante*, p. 210. By the Local Government Act, s. 75, sub-s. (16) (*g*), *ante*, p. 146, the above provision is not to prevent the use of schools and public rooms for taking the poll and hearing objections to nomination papers at elections of county councillors.

The power of the returning officer to vote, in case of an equality of votes, is given by s. 58, sub-s. (5), *ante*, p. 287.

The title to vote is regulated by s. 51, *ante*, p. 284.

2. The mayor shall, at least four days before the day of election, give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations. **Schedule 3.**

This duty will devolve on the returning officer at elections of county councillors. See the Local Government Act, s. 75, sub-s. (4), *ante*, p. 142.

3. The mayor shall provide everything which, in the case of a parliamentary election, is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

This duty will devolve on the returning officer at elections of county councillors. See the Local Government Act, s. 75, sub-s. (4), *ante*, p. 142.
As to what is required to be provided, see s. 8 of the Ballot Act, *ante*, p. 211.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers as, in the judgment of the mayor, may be necessary for effectually taking the poll at the election.

See the note to the preceding rule.

5. All expenses of the election shall be defrayed in manner by this Act provided.

As to the expenses of the elections of county councillors, see the Local Government Act, s. 75, sub-ss. (17) to (19), *ante*, p. 146.

6. No return shall be made to the Clerk of the Crown in Chancery.

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EIGHTH SCHEDULE.

FORMS.

Part I.—Declarations on Accepting Office.

FORM A.

FORM OF DECLARATION ON ACCEPTANCE OF CORPORATE OFFICE.

I, *A. B.*, having been elected mayor, [*or* alderman, councillor, elective auditor, *or* revising assessor] for the borough of , hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [*and in the case of the person being qualified by estate say*, And I hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be*], to the value or amount of one thousand pounds, or five hundred pounds [*as the case may require*], over and above what will satisfy my just debts].

FORM B.

DECLARATION BY RECORDER OR BOROUGH JUSTICE.

I, *A. B.*, hereby declare that I will faithfully and impartially execute the office of recorder [*or* justice of the peace] for the borough of according to the best of my judgment and ability.

Form A. is the form of declaration which must be made by county councillors under ss. 35, 41, *ante*.
Form B. does not appear to have any application to counties.

MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

(47 & 48 Vict. Cap. 70.)

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections. [14th August, 1884.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (that is to say,) :

Short title.

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

This Act is incorporated with the Local Government Act, 1888. See s. 75 of that Act, *ante*, p. 141. It is, in so far as relates to election petitions, supplemental to Part IV. of the Municipal Corporations Act, 1882, which has been already set out.

Corrupt Practices.

Definition and punishment of corrupt practice at municipal election.

2.—(1.) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation (*a*).

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election (*b*).

(*a*) See Sched. 3, Part I., *post.*

(*b*) By the Corrupt Practices Act, 1883 (46 & 47 Vict. c. 51), s. 6, corrupt practices other than personation or aiding, etc., in the commission of personation, are declared to be misdemeanors, and any person convicted of any of them is liable to be imprisoned, with or without hard labour, for a term not exceeding two years, or to be fined any sum not exceeding 200*l.* A person who commits the offence of personation or of aiding, etc., the commission of that offence is guilty of felony, and liable on conviction to be imprisoned, with or without hard labour, for a period not exceeding two years. In addition to these punishments, a person who is convicted on indictment of any corrupt practice shall not be capable for a period of seven years from the date of his conviction of being registered as an elector, or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office (see *infra*) ; or of holding any public or judicial office (see *infra*), and if he holds any such office the office shall be vacated. Any person

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NOTE.

so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons, his election shall be vacated from the time of such conviction. By s. 64, the expression "public office" means any office under the Crown or under the charter of a city or municipal borough, or under the Acts relating to municipal corporations, or to the poor law or under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), or under the Public Health Act, 1875 (38 & 39 Vict. c. 55), or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local Government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk, or other officer under a council, board, commission, or other authority, or is any other office to which a person is elected and appointed under any such charter or Act as above mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly.

The expression "judicial office" includes the office of justice of the peace and revising barrister.

As to the form of indictment for corrupt practices, see *R.* v. *Stroulger*, 17 Q. B. D. 327; 55 L. J. M. C. 137; 55 L. T. (N.S.) 122; 34 W. R. 719; *R.* v. *Norton*, 16 Cox C. C. 59.

Each act of bribery is a distinct offence, for which separate penalties are incurred. *Milnes* v. *Bale*, L. R. 10 C. P. 591; 44 L. J. C. P. 336; 33 L. T. (N.S.) 174; 23 W. R. 660; 39 J. P. 743.

Incapacity of candidate reported guilty of corrupt practice. 45 & 46 Vict. c. 50.

3.—(1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough (*a*), it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882 (*b*), that any corrupt practice other than treating and undue influence has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough (*c*), and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice (*d*).

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has

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been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough (*c*), during a period of three years from the date of the report, and if he has been elected, his election shall be void.

(*a*) This includes an election of a county councillor.

(*b*) See this section, *ante*, p. 303.

(*c*) This will apply so as to disqualify a candidate from being elected as county councillor for his county.

(*d*) For these incapacities see the note to the last section.

Illegal Practices.

Certain expenditure to be illegal practice.

4.—(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate (*a*) at a municipal election, be made—

(a.) On account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise ; or

(b.) To an elector, on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice ; or

(c.) On account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough, one committee room for the borough, and if the election is for a ward, one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors over and above the said two thousand (*b*).

(2.) Subject to such exception as may be allowed in pursuance of this Act (*c*), if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person (*d*) receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

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(*a*) The Municipal Corporations Act, 1882, s. 77, *ante*, p. 296, defines candidate as "a person elected or having been nominated or having declared himself a candidate for election." The date of such a declaration must, therefore, be the earliest date at which it can be said to have commenced so as to make him liable as a candidate for acts which, if committed by a candidate or his agents, would clearly be election offences. Difficult questions might, however, arise as to when a person had declared himself to be a candidate, for this might be inferred from his acts without a formal declaration. The question of when a candidature commences has often been discussed in parliamentary election cases (see, in particular, *The Kennington case*, 4 O'M. & H. 93; *The Rochester case*, 4 O'M. & H. 156; *Elgin and Nairn*, 5 O'M. & H. 1; *Lancaster*, 5 O'M. & H. 39). Although the cases are not strictly in *pari materia* (the Municipal Corporations Act, 1882, having no application to parliamentary elections), the views of HAWKINS, J., as stated in *The Walsall case*, 4 O'M. & H. 123, are quoted as bearing on the question of the commencement of a candidature. In that case the learned judge said: "I cannot help thinking that the period during which a candidate can be held responsible for the illegal and injudicious acts of his recognized supporters must be confined within reasonable limits. It would not be reasonable to say that a man who contemplates in the year 1892 becoming a candidate in the year 1896, could not illegally employ a person to do for him a variety of acts to ingratiate him with those whose votes and suffrages he intends to seek in some future year. Upon the present occasion, I think the limit of time to which we ought fairly to apply our minds is a period commencing from the time when it was first known that the respondent announced his intention to present himself as a candidate for election at the next ensuing election. . . . I cannot think that the period of candidature or the period of agency is to be limited either by the date of the issuing of the writ or by the day of nomination; but I think that when an election is contemplated as probable in the course of a few months, and it is well recognized that to secure the election of a particular candidate active steps must be taken, and every exertion made at once to secure that object, it cannot be reasonably said that there can be no agency to take such steps or to make such exertions until the immediate approach of the election by the issuing of the writ."

(*b*) This provision will apply to an election of a county councillor as if the division in which the election takes place were the ward of a borough.

(*c*) See ss. 19—21, *post*.

(*d*) The word *person* is here presumed to mean *elector* in cases falling within sub-s. (1) (*b*), as it does not appear to be illegal to make payments such as those mentioned in that clause to a person other than an elector. And see sub-s. (3).

Expense in excess of maximum to be illegal practice.

5.—(1.) Subject to such exception as may be allowed in pursuance of this Act (*a*), no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, save that in the case of an election of a councillor a sum may be paid and expense incurred not in excess of the maximum amount following; (that is to say,)

The sum of twenty-five pounds, and, if the number of electors in the borough or ward exceeds five hundred, an additional amount of threepence for each elector above the first five hundred electors (*b*).

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(2.) Any candidate or agent of a candidate or person who knowingly acts in contravention of this section shall be guilty of an illegal practice.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third (*c*).

(4.) Where two or more candidates at the election, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed, for the purposes of this enactment, to be joint candidates at such election : Provided that—

(a.) The employment and use of the same committee room, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates :

(b.) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates :

(c.) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act, which would otherwise make an act an illegal practice, and the candidate may be relieved accordingly from the consequences of having incurred such excess of expenses (*d*).

(*a*) See ss. 19—21, *post*.

(*b*) This will apply to an election of a county councillor, as if the word *ward* meant an electoral division.

(*c*) As only one county councillor is to be elected for each division, the provisions of this section as to joint candidates are inapplicable to elections of county councillors.

(*d*) See ss. 19—21, *post*.

Voting by prohibited persons and

6.—(1.) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is

prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice (*a*).

publishing of false statements of withdrawal to be illegal.

(2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent (*b*).

(*a*) As to persons prohibited from voting by this Act, see ss. 22, 23, and Sched. 3, Part II., *post*.

While it is incumbent on an agent to warn persons disqualified not to vote, his failure to do so does not amount to procuring within this section. *Stepney Case*, 4 O'M. & H. 178.

(*b*) But *quære* whether the election would not be avoided by the commission of such an offence by an agent. See s. 8 (2), *post*.

Punishment on conviction of illegal practice.

7. A person guilty of an illegal practice in reference to a municipal election (*a*), shall on summary conviction be liable to a fine not exceeding one hundred pounds, and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office (*b*) within the meaning of this Act) held for or within the borough (*c*) in which the illegal practice has been committed.

(*a*) This will include an election of a county councillor.

(*b*) As to what is a public office, see s. 34, *post*, and the notes to s. 2, *ante*.

(*c*) This word includes county in the application of the section to elections of county councillors.

Incapacity of candidate reported guilty of illegal practice.

45 & 46 Vict. c. 50.

8.—(1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882 (*a*), and a petition alleging such illegal practice may be presented and tried accordingly.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough (*b*) in which a charge is made of any illegal practice having been committed in reference to such election, the election court (*c*) shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough (*d*) during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected,

Sect. 8 (2). his election shall be void ; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice (*e*).

(*a*) See this Part, *ante*, p. 296.

(*b*) This includes an election for an electoral division of a county.

(*c*) As to the election court, see s. 92 of the Municipal Corporations Act, 1882, *ante*, p. 302.

(*d*) See s. 3, note (*c*), *ante*, p. 344.

(*e*) See s. 7, *ante*.

Illegal Payment, Employment, and Hiring.

Providing of money for illegal practice or payment to be illegal payment.

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act (*a*), or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception (*b*), such person shall be guilty of illegal payment (*c*).

(*a*) See s. 5, *ante*, p. 345.

(*b*) See ss. 19—21, *post*.

(*c*) Money paid for the employment of persons to keep order at meetings is an illegal employment. *Packard* v. *Collings*, 54 L. T. (N.S.) 619.

Gratuitous refreshments to workers renders their employment illegal within the meaning of this section. *Barrow Election Petition*, *ib.* 618.

A payment to a voter for damage done to a banner or for loss of his hat at a meeting is not an illegal payment. *Stepney Case*, 4 O'M. & H. 39.

Employment of hackney carriages, or of carriages and horses kept for hire.

10.—(1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election (*a*), any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election. Sect. 10 (4).

(*a*) This includes the election of a county councillor.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election (*a*), in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment. Corrupt withdrawal from a candidature.

(*a*) This includes an election of a county councillor.

12.—(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election (*a*), be made on account of bands of music, torches, flags, banners, cockades, ribbons or other marks of distinction (*b*). Certain expenditure to be illegal payment.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract, or receiving such payment, shall also be guilty of illegal payment if he knew that the same was made contrary to law.

(*a*) This includes an election of a county councillor.

(*b*) As to the meaning of "marks of distinction," see *The Walsall case*, 4 O'M. & H. 126, in which a parliamentary election was held to be void on the ground that the use of certain cards distributed by the respondent and intended to be worn by voters in their hats was an illegal practice. As to these cards, POLLOCK, B., said: "The cards which were printed were not merely the card of invitation as of old, but bore the photographic likeness of the candidate and words of invitation and encouragement to fight for him. In themselves they cannot be found fault with as being within the Act of Parliament under the words 'marks of distinction,' and so long as cards alone are used there can be no objection. I may even go further and say that sometimes the cards may be put in a man's coat or fixed to the outside of his hat and yet not necessarily be 'marks of distinction.' But if the card is made specially adaptable to place in the hat as these cards were in fact, and if they were used for that purpose, then, after being ordered, having been used, and having been so described in the account, the person who pays that account pays it knowing what it is. . . . The legislature have decided to prohibit any mark of distinction and any party badge from being supplied and paid for by candidates their agents."

But compare *Clare*, 4 O'M. & H. 162; *Pontefract*, *ib.* 200. Broad strips of canvas with words printed on them and stretched across streets were held to be banners in the *Stepney case*, 4 O'M. & H. 178.

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Certain employment to be illegal.

13.—(1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election (*a*), be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),—

(a.) A number of persons may be employed, not exceeding two for a borough or ward (*b*), and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

(b.) One polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract bonâ fide made with any person in the ordinary course of business (*c*).

(2.) Subject to such exceptions as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act.

(3.) A person legally employed for payment under this section may or may not be an elector, but may not vote.

(*a*) This includes an election of a county councillor.

(*b*) In applying this section to the election of a county councillor, "electoral division" must be substituted for "ward."

(*c*) This appears to be intended to meet the case of a person who contracts for the purposes of the election, *e.g.*, for printing. The employés of such persons are not to be deemed to be employed within the meaning of this section. This section makes illegal the employment of a paid election agent (other than a polling agent under sub-s. (1) (b). *Ex parte Walker*, 22 Q. B. D. 384; 58 L. J. Q. B. 190; 60 L. T. (N.S.) 581; 37 W. R. 293; 53 J. P. 260.

Name and address of printer on placards.

14. Every bill, placard, or poster having reference to a municipal election (*a*) shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice (*b*), and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds (*c*

(*a*) This includes an election of a county councillor.

(*b*) As to the punishment of an illegal practice, see s. 7, *ante*, p. 347.

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(c) The appellant was a candidate for a seat on a local board. The respondent received from his own servant at his residence a printed address and letter having reference to the election, and purporting to be signed by the appellant, but having no printer's name thereon. This document was printed for publication by instructions conveyed to the printer in a letter from the appellant's brother, who resided with him. The printer debited the appellant with the cost of printing, but was not paid. It was held on these facts that there was no evidence that the appellant had "printed or caused to be printed" the document in question. Placards or posters, also without the printer's name and address, printed by the instructions of one E., who was advertised in a local newspaper as chairman of a committee for promoting the election of the appellant, and who sent the copy to the printer, were proved to have been posted about the district at E.'s expense. The court doubted whether this was evidence of the printing and posting by an agent of the appellant; but the justices having convicted the appellant in one penalty for both offences, and the conviction being bad as to the first, *held*, that it was bad altogether. *Bettesworth* v. *Allingham*, 16 Q. B. D. 44; 34 W. R. 296; 50 J. P. 55. It should be observed, with reference to this case, that the court seemed to assume that an election address was a bill, etc., within the meaning of this section.

It has, however, been held in some cases that an election address printed on note paper to be sent by post is not a "bill" within this section. See the cases noted 5 T. L. R. 159, 160, 170.

Notice that if the address is published by a person other than the printer, his name and address, as well as those of the printer, must be stated.

Saving for creditors.

15. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

See ss. 9—13, *ante*.

In the case of an expense incurred in contravention of the Act, the illegality of the expense will be no defence to an action by a creditor who, when the expense was incurred, was ignorant of its being in contravention of the Act. This provision is necessary for the protection of creditors who have no means of knowing what other expenses have been incurred by a candidate.

Use of certain premises for committee rooms or meetings to be illegal hiring.

16.—(1.) (a.) Any premises which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

(b.) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election (*a*), be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof, in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he

Sect. 16 (1). knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid (*b*).

(*a*) This includes an election of a county councillor.

(*b*) The use of a room in a coffee tavern having a separate entrance from that into the portion of the house where refreshments were sold, and no direct communication therewith, was held not to be illegal. *Pascoe* v. *Puleston*, 45 L. T. (N.S.) 732 ; 50 J. P. 134. But where there was a door between the part used for the election and a public house, though the door was kept locked, the section was held to apply. *Ex parte Payne*, *Times*, November 2nd, 1894.

Punishment of illegal payment, employment, or hiring.

17.—(1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice (*a*).

(*a*) The offence will, therefore, be punishable under s. 7, *ante*, p. 347.

Avoidance of election for extensive illegal practices, etc.

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough (*a*) it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which if elected he might have served, be capable of being elected to or holding any corporate office in the said borough (*b*).

(*a*) This includes an election of a county councillor for an electoral division of a county.

(*b*) This phrase includes the office of county councillor in the said county.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

Report exonerating candidate in

19. Where upon the trial of an election petition respecting a municipal election (*a*), the election court (*b*) reports that a candidate

at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences (*c*), in reference to such election, and the election court further report that the candidate has proved to the court— Sect. 19. certain cases of corrupt and illegal practice by agents.

(a.) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

(b.) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

(c.) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(d.) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

(*a*) This includes the election of a county councillor.

(*b*) As to the election court, see s. 92 of the Municipal Corporations Act, 1882, *ante*, p. 302.

(*c*) Observe that this does not include corrupt practices.

20. Where, on application made, it is shown to the High Court or to a municipal election court (*a*), by such evidence as seems to the court sufficient— Power of High Court and election court to except innocent act from being illegal practice, etc.

(a.) That any act or omission of a candidate at a municipal election for a borough or ward of a borough (*b*), or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring (*c*); and

(b.) That such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(c.) That such notice of the application has been given in the said borough as to the court seems fit;

and under the circumstances it seems to the court to be just that the said candidate, agent, and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment,

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employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission (*d*).

(*a*) As to this court, see s. 92 of the Municipal Corporations Act, 1882, *ante*, p. 302.

(*b*) This will apply to a candidate at an election of county councillors.

(*c*) Observe that corrupt practices are not mentioned here.

(*d*) In order to support an application under this section, it will not be sufficient that notice of intention to make the application has been advertised in the local papers, but such notice should be published in such a manner as will ensure a reasonable certainty that persons interested had notice ; and it will also be insufficient, in the affidavits upon which the application is made, merely to state that the act in respect of which relief is sought arose from inadvertence, and not from any want of good faith, without showing some reasonable excuse for such inadvertence. *Ex parte Perry*, 48 J. P. 824 ; *Ex parte Haseldine*, 59 J. P. 71.

The court requires that the notice should be given to the opposing candidate or candidates, and to the returning officer, and should be posted about in the borough or district, besides being advertised in the local newspapers. *Ex parte Levanton*, *Ex parte Pierce*, 53 J. P. 263 ; 5 T. L. R. 173 ; and see *Ludlow*, 54 L. T. (N.S.) 129 ; 34 W. R. 352. In that case, HUDDLESTONE, B., interpreted "inadvertence" as used in this section to mean "negligence or carelessness where the circumstances show an absence of bad faith."

In the year 1889, relief was granted in many cases arising out of the first election of county councillors, but in several of these the court acted on the ground that the penal provisions of this Act being made applicable to county council elections by incorporation only, it was difficult for candidates to be aware of the illegality of certain acts. "The court was disposed to treat the excuses with greater leniency than would be done hereafter when the knowledge of the Act had been promulgated throughout the country." *Per* HUDDLESTONE, B., in *Ex parte Levanton*, *supra*, and see also *Ex parte Walker*, *infra*. Each case must depend upon its own circumstances, and it would be unsafe to rely upon the reported decisions as governing future cases.

Relief was granted in the following cases: employment of too many messengers ; *Ex parte Darlington* (1889), 53 J. P. 71 ; 5 T. L. R. 183 ; holding meeting at public-house : *Ex parte Hutchinson* (1889), 5 T. L. R. 136 ; compare *Ex parte Montefiore*, 5 T. L. R. 78, a case relating to a school board election, and *Ex parte Terry*, 1 T. L. R. 183, a case relating to a municipal election where meetings had been held in clubs in which liquors were supplied to members ; issue of election address or placard without the printer's name : *Ex parte Clark*, 52 L. T. (N.S.) 260 ; *Ex parte Ives* (1889), 5 T. L. R. 136 ; and see *ib*, p. 195. There is no power to grant relief to the printer in such a case. *Ex parte Levanton*, *supra*. As to paid canvassers and agents, relief was granted in *Ex parte Birley* and *Ex parte Measom*, 5 T. L. R. 220, 221, and refused in *Ex parte Thomas*, 60 L. T. (N.S.) 728 ; 5 T. L. R. 198 ; and *Ex parte Hobbs*, *ib*. 272.

An appeal lies to the Court of Appeal against the refusal of a Divisional Court to make an order under this section exempting a candidate from penalties inadvertently incurred under s. 17, *ante*, by reason of practices declared to be illegal by s. 13, *ante*, such a matter not being a criminal matter within the meaning of s. 47 of the Judicature Act, 1883. *Ex parte Walker*, 22 Q. B. D. 384; 58 L. J. Q. B. 190 ; 60 L. T. (N.S.) 581 ; 37 W. R. 293 ; 53 J. P. 260. In that case, Lord COLERIDGE, C.J., and HAWKINS, J., had refused to grant to a candidate at the first election of county councillors exemption from penalties

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for the employment of an election agent for promise of payment, the candidate being ignorant of the provisions of s. 13, *ante*; relief had been granted by Divisional Courts differently constituted in similar cases, and upon the ground of ignorance. The Court of Appeal with the full assent of Lord COLERIDGE, C.J., and HAWKINS, J., granted the relief asked on the terms of the applicant paying the costs in both courts. Lord ESHER, M.R., expressed a strong opinion that at any future election it would be very difficult to excuse anyone from penalties on the ground of ignorance of the provisions of the Act; and see *Walsall*, 4 O'M. & H. 128; *Southampton*, 12 T. L. R. 237. See also as to this right of appeal, *Ex parte Thomas*, 60 L. T. (N.S.) 728; 5 T. L. R. 234. *Ex parte Birtwhistle*, 5 T. L. R. 321.

If the application is made by a person against whom a petition is pending, the court will order the application to stand over till after the trial of the petition. *Ex parte Wilks*, 16 Q. B. D. 114; 55 L. J. Q. B. 576; 34 W. R. 273; 50 J. P. 487. *Ex parte Evans*, 5 T. L. R. 206. *Secus*, where a petition is merely threatened. *Ex parte Stephens*, 5 T. L. R. 203.

Relief if given does away with the illegal practice relieved against, and prevents the election from being avoided. *Hexham*, 4 O'M. & H. 144.

Sending in claims and making payments for election expenses.

21.—(1.) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor (*a*) on account of or in respect of the conduct or management of such election (*b*) shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice (*c*), but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2.) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3.) Within twenty-eight days after the day of election of a councillor (*a*) every candidate at such election shall send to the town clerk (*d*) a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect (*e*).

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(4.) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses) or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same (*f*).

(5.) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice (*e*), and if he knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act (*g*).

(6.) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

(7.) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems fit (*h*).

(8.) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

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(10.) The return and declaration sent in pursuance of this Act to the town clerk (*d*) shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall on demand furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11.) After the expiration of the said twelve months the town clerk (*d*) may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

(*a*) This will include the election of a county councillor.

(*b*) Money paid by an agent of a candidate for the employment of persons to keep order at meetings is within this provision. *Packard* v. *Collings*, 54 L. T. (N.S.) 619.

(*c*) And therefore punishable under s. 7, *ante*.

(*d*) In elections of county councillors this return must be sent to the clerk of the county council. See the Local Government Act, s. 75, sub-s. (5), *ante*, p. 142.

(*e*) This return and declaration must be made, although no expenses have actually been incurred by the candidate. But the court will, on satisfactory proof that the omission happened under such circumstances as to amount to an authorized excuse under the Act, make an order that the return and declaration be made notwithstanding the lapse of the prescribed period for making them. *Ex parte Robson*, 18 Q. B. D. 336; 55 L. T. (N.S.) 813; 35 W. R. 290; 51 J. P. 199.

For a case where a candidate was allowed to make payments after the expiration of the proper time, see *South Shropshire Election*, 2 T. L. R. 347; *Ipswich Election*, 3 T. L. R. 397. For a case where a candidate was allowed to make the return and declaration prescribed by the next section after the prescribed time, see *Ex parte Robson*, *supra*.

Where a person voted and afterwards accepted payment for services rendered as an agent the court refused to relieve him from the consequences. *Re Essex (South West Division) Election*, 2 T. L. R. 388.

In *Ex parte Matthews*, 2 T. L. R. 548, the court granted relief to a candidate who had acted as his own agent and had through ignorance omitted to make a return of his expenses, but the court intimated that in future candidates must make themselves better acquainted with the law.

Where a person had obtained a certificate of indemnity for a late return of his expenses, and subsequently on the same day (but after the order had been drawn up) a voter appeared to oppose the granting of such certificate, it was held that the application of the voter must be dismissed in the absence of any sufficient explanation of his delay. *Wigan Election*, 2 T. L. R. 159.

(*f*) Observe that any person may sue. The Crown cannot remit the penalties. See *Todd* v. *Robinson*, 12 Q. B. D. 530; 53 L. J. Q. B. 251; 50 L. T. (N.S.) 298; 32 W. R. 858; 48 J. P. 692.

(*g*) See s. 2, *ante*.

(*h*) See the cases cited in the notes to the last section; also *Ex parte Robson*, *supra*. Where a claim was disputed, and afterwards decided against the candidate, leave was given to pay it in. *Re Lowestoft Election*, 4 T. L. R. 38.

Notice of application to the court must be given to the other candidates, to

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the returning officer, and to the public by advertisements. *Re Ludlow Election*, 54 L. T. (N.S.) 129; 34 W. R. 352.

NOTE. An application for leave to pay the hire of a brougham used without authority by the clerk of a candidate was refused in *Re Chelsea Election*, 2 T. L. R. 374.

Disqualification of Electors.

Prohibition of persons guilty of offences from voting.

22. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at a municipal election is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

This will apply to election of county councillors.

Application of ss. 37 and 38 of 46 & 47 Vict. c. 51.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part II. of the Third Schedule to this Act shall apply as part of this Act.

See the schedule, *post*. The sections referred to relate mainly to the incapacities of persons convicted or reported by an election court for corrupt or illegal practices, and s. 38 (1) gives a person an opportunity of being heard before he is reported.

List in burgess roll of persons incapacitated for voting by corrupt or illegal practices.

24.—(1.) The town clerk in every municipal borough (*a*) shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election, or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty (*b*).

(2.) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) (*c*) was held in the said borough or in the county in which such borough is situate.

(3.) The town clerk of any municipal borough (*a*) shall, not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough (*d*), send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall

publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses.

(5.) The revising authority (*e*) shall determine such claims and objections, and shall revise such list in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors.

(6.) Where it appears to the revising authority (*e*) that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7.) A revising authority (*e*) in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the burgess roll (*f*), and shall be printed and published therewith wherever the same is printed or published.

(9.) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned (*g*).

45 & 46 Vict. c. 50.

(*a*) In counties this duty will devolve on the clerk of the county council.

(*b*) The terms used in this section must be modified to make them applicable

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to elections of county councillors. Thus county electors must be substituted for burgesses, electoral division for ward, etc.

(*c*) See the note (*b*) to s. 2, *ante*, p. 342.

(*d*) The day here referred to is August 1st. The term parish burgess lists will include lists of county electors. See note (*b*), *supra*.

(*e*) That is, the revising barrister. See the County Electors Act, 1888 (51 Vict. c. 10), s. 4, *post*.

(*f*) The term burgess roll includes roll of county electors.

(*g*) See the section here referred to, *ante*, p. 294.

Proceedings on Election Petitions.

Petition for illegal practice.

25.—(1.) A municipal election petition (*a*) complaining of the election on the ground of an illegal practice may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorized excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse (*b*).

Time for presentation of petition alleging illegal practices.

(2.) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

45 & 46 Vict. c. 50.

(3.) Any election petition presented within the time limited by the Municipal Corporations Act, 1882 (*c*), may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented.

(4.) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

(*a*) This includes a petition against the return of a county councillor.

(*b*) As to this return and declaration and authorized excuse, see s. 21, *ante*.

(*c*) As to the time for presentation of a petition alleging corrupt practices, see s. 88, sub-s. (4), of the Municipal Corporations Act, 1882, *ante*, p. 299.

Where a petition has not been amended in time the petitioner cannot include in his particulars or give evidence of offences alleged to have been committed after the date of the petition. *Cremer* v. *Lowles*, [1896] 1 Q. B. 504 ; 65 L. J. Q. B. 289 ; 74 L. T. (N.S.) 42 ; 44 W. R. 629 ; 60 J. P. 100.

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Withdrawal of election petition.

26—(1.) Before leave for the withdrawal (*a*) of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of Public Prosecutions (*b*) a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of Public Prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of Public Prosecutions or his assistant, or other representative, may consider material.

(6.) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882 (*c*), where the withdrawal is induced by a corrupt consideration.

45 & 46 Vict. c. 50.

(7.) In every case of the withdrawal of an election petition by leave of the election court (*d*), such court shall report in writing to

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(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

(*a*) As to the procedure for withdrawal of a petition, see s. 95 of the Municipal Corporations Act, 1882, *ante*, p. 306, and rr. 58—62, *post*.

(*b*) The Solicitor to the Treasury is now the Director of Public Prosecutions. 47 & 48 Vict. c. 58.

(*c*) See sub-s. (4) of the section referred to, *ante*.

(*d*) See s. 92 of the Municipal Corporation Act, 1882, *ante*, p. 302.

Continuation of trial of election petition.

27.—The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued *de die in diem* on every lawful day until its conclusion.

As to the adjournment of the trial, see s. 93, sub-s. (3), of the Municipal Corporations Act, 1882, *ante*, p. 303.

Attendance of Director of Public Prosecutions on trial of election petition, and prosecution by him of offenders.

28.—(1.) On every trial of a municipal election petition (*a*) the Director of Public Prosecutions (*b*) shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court (*c*) with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2.) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity (*d*) and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

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(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act (*e*), upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence (*f*).

Provided that in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence (*g*); and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named (*h*).

(6.) Upon such order being made,

(a.) If the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(b.) If the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(c.) If the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial

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for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7.) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882 (*i*).

45 & 46 Vict. c. 50.

(8.) The Director of Public Prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years' standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9.) The costs incurred in defraying the expenses of the Director of Public Prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid ; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct (*k*).

45 & 46 Vict. c. 50.

(*a*) This includes an election of county councillors.

(*b*) The Solicitor to the Treasury is now the Director of Public Prosecutions.

(*c*) As to the court, see s. 92 of the Municipal Corporations Act, 1882, *ante*.

(*d*) See as to this certificate, s. 30, *post*.

(*e*) See ss. 2, 7, *ante*.

(*f*) See s. 7, *ante*.

(*g*) The "evidence" which is to satisfy the court before it makes an order for a prosecution means the evidence given during the trial of the petition. A commissioner was, therefore, held to have acted within his jurisdiction in ordering the prosecution of a person to whom he had refused a certificate of indemnity, and who did not appear, without rehearing the evidence affecting him, and also in issuing a summons under sub-s. (6) (*c*) of this section for his attendance before a court of summary jurisdiction for the purpose of being formally committed for trial. *R.* v. *Shellard*, 23 Q. B. D. 273 ; 58 L. J. M. C. 142 ; 61 L. T. (N.S.) 120 ; 53 J. P. 821 ; 5 T. L. R. 519.

(*h*) A commissioner ordered persons to be prosecuted in the next county. The order was held valid, although it did not specify the particular nature of the corrupt practice, and although the grand jury of the county where the

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offence was committed had not found a true bill ; and although the indictment did not state the fact that the corrupt practice was committed in another county ; and although the indictment specified several distinct acts of bribery and the prosecutor elected to proceed on one or more of them. *R.* v. *Riley* ; *R.* v. *Campion*, 59 L. J. M. C. 122 ; 63 L. T. (N.S.) 119 ; 55 J. P. 21 ; 17 Cox C. C. 120.

(*i*) See this sub-section, *ante*.

(*k*) If a petition is utterly unfounded the petitioner may be ordered to pay the costs of the Director of Public Prosecutions. *Crossman* v. *Gent-Davis*, 54 L. T. (N.S.) 628 ; *Worcester*, 4 O'M. & H. 153. This section applies only to the trial of a petition. The costs of the Public Prosecutor cannot be ordered where the petition is withdrawn. *Pascoe* v. *Puleston*, 54 L. T. (N.S.) 733 ; 50 J. P. 135.

Power to election court to order payment by borough or individual of costs of election petition.

29.—(1.) Where upon the trial of a municipal election petition (*a*) it appears to the election court (*b*) that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right, as follows :

(a.) If it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough (*c*) ; and

(b.) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct.

Sect. 29 (3). (3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petitions and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale, as between solicitor and client (*d*).

45 & 46 Vict. c. 50.

(*a*) This includes a petition against the return of a county councillor.

(*b*) See s. 92 of the Municipal Corporations Act, 1882, *ante*.

(*c*) The word *borough* will include *county* when this section is applied to an election of county councillors. See *R.* v. *Maidenhead* (*Mayor of*), cited in the notes to the Municipal Corporations Act, 1882, s. 101, *ante*, p. 311. As to the fund out of which this payment is to be made, see s. 32, *post*. Where the respondents on the second day of the inquiry abandoned their defence, but the proceedings were prolonged at the instance of the representative of the public prosecutor, it was held that the costs of the petitioner in attending the prolongation of the inquiry were costs of the petition and payable by the borough under this section. *Preece* v. *Harding*, W. N. (1889), p. 217.

(*d*) As to the taxation of costs, see r. 68, *post*.

Miscellaneous.

General provisions as to prosecution of offences under this Act.

30. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of Public Prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election ; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions (*a*) :

46 & 47 Vict. c. 51.

(a.) Where the Director of Public Prosecutions (*b*) considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough (*c*), he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate

or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

(b.) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections (*d*); 45 & 46 Vict. c. 50.

(c.) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive.

(*a*) Section 45 requires the Director of Public Prosecutions (now the solicitor to the Treasury) to inquire into alleged corrupt or illegal practices; s. 46 provides for the removal of incapacity on the ground that it was procured by perjury; ss. 50—57 relate to legal proceedings; s. 59 relates to the obligation of a witness to answer and the giving of a certificate of indemnity to a witness who answers truly all questions which he is required by the election court to answer; and s. 60 provides for the submission of the report of an election court to the Attorney-General.

(*b*) See the preceding note.

(*c*) This will include an election of a county councillor.

(*d*) That is, by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can be made. 46 & 47 Vict. c. 51, s. 56.

Person incapacitated by conviction or report to vacate seat or office.

31. If any person, in consequence of conviction or of the report of an election court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office (*a*), and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date.

(*a*) See the note to s. 2, *ante*, p. 342.

Payment and recovery of costs.

32.—(1.) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough (*a*), such costs shall be paid out of the borough fund or borough rate (*b*).

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

(*a*) See s. 29, *ante*, p. 365.

(*b*) With reference to elections of county councillors, this must be read as county fund or county rate.

Service of notices.

33. Where any summons, notice or document is required to be served on any person with reference to any proceeding respecting

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a municipal election in any borough or ward of a borough (*a*), whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough (*b*), or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

(*a*) This will apply to an election of a county councillor in an electoral division.

(*b*) *Borough* must be read as *county* with reference to an election of a county councillor.

Definitions. 45 & 46 Vict. c. 50. 46 & 47 Vict. c. 51.

34. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883 (*a*); except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election (*b*).

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll (*c*).

(*a*) For the definitions of expressions used in these Acts, see s. 7 of the Municipal Corporations Act, 1882, and s. 64 of the Corrupt, etc., Practices Act, 1883.

(*b*) As applied to elections of county councillors, the word election will include an election for electoral division.

(*c*) The division register corresponds to the burgess roll in boroughs.

Application to city of London of Act and of Part IV. of 45 & 46 Vict. c. 50.

35. This Act and Part IV. of the Muncipal Corporations Act, 1882, shall apply to a municipal election in the city of London, subject as follows:—

(1.) For the purpose of such application "municipal election" means an election to the office of mayor, alderman, common councilman, or sheriff, and includes the election of any officer elected by the mayor, aldermen, and liverymen in common hall, and the expression "corporate office" includes each of the aforesaid offices, and the

expression "borough" shall be deemed to apply to the said city :

(2.) The expression "burgess," means in relation to each municipal election, any person entitled to vote at such election :

(3.) Any costs or expenses directed to be paid out of the borough fund or borough rate shall, if incurred in respect of the election of an alderman or common councilman for any ward, be paid out of the ward rate of that ward, and in any other case shall be paid by the chamberlain of the said city out of the city's cash :

(4.) * * * * *

(5.) A vacancy in any office created by the decision of an election court shall be filled by a new election, and every summoning officer is hereby authorized and required to summon the electors for such election :

(6.) In the case of an election of an alderman and common councilman a sum may be paid and expense incurred not in excess of the maximum fixed by this Act for the election of a councillor :

(7.) In the case of an election by liverymen in common hall a sum may be paid and expenses incurred, if a poll be not demanded, not exceeding forty pounds, and, if a poll be demanded, then not exceeding two hundred and fifty pounds, and, in the event of a poll being demanded, such poll shall take place on the third day after the demand for a poll be made, unless such third day be a Sunday, in which case the poll shall take place on the fourth day, and the poll shall last for one day only, and commence at the hour of eight in the morning and close at six in the evening :

(8.) The town clerk shall send the corrupt and illegal practices list, when made out by him, to the ward clerk of each ward, not less than fourteen days before the day on which the list of persons entitled to vote in such ward is required to be made out, and the aldermen and common councilmen of each ward shall omit from such last-mentioned list the names of all persons mentioned in the corrupt and illegal practices list, and the corrupt and illegal practices list shall be printed and appended to every copy of the list of persons entitled to vote in such ward.

This section applies to municipal elections in the city of London, and has no bearing on the election of county councillors.

Sub-section (4) was repealed by 50 & 51 Vict. c. xiii.

Sect. 36 (1).

Application of Act to other Elections.

Application of this Act and Part IV. of 45 & 46 Vict. c. 50, to other elections.

36.—(1.) Subject as hereinafter mentioned, the provisions of this Act and of Part IV. of the Municipal Corporations Act, 1882, as amended by this Act, shall extend to elections for the offices mentioned in the first column of the First Schedule to this Act as if re-enacted herein, and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Provided that in the application of the said provisions to any such election :

(a.) The area, officer, and rate mentioned opposite to the office in the second, third and fourth columns of the said schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively.

(b.) The expression "corporate office" in the said provisions shall mean an office mentioned in the said schedule, and in relation to the election of a guardian of a union includes any such office in the union, and "a municipal election" shall mean an election to such office, and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(c.) No corrupt and illegal practices list shall be made for any such election.

(d.) Vacancies created by the decision of an election court shall be filled by a new election.

(e.) A petition relating to the election of a guardian of the union may be tried at any place within the union.

(f.) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to any office mentioned in the said schedule on any licensed or other premises not situate in an urban sanitary district or in the metropolis ;

(g.) Where the poll at any election to an office in the said schedule is taken by means of voting papers, such of the said provisions as relate to personation, polling agents, disclosure of votes and conveyance of voters, shall not apply ; but any offence in relation to voting papers or to personation or to voting at such election, which is punishable on summary conviction (that is to say), the offences mentioned in section three of the Poor Law Amendment Act, 1851, and in rule sixty-nine of

14 & 15 Vict. c. 105.

Schedule Two to the Public Health Act, 1875, shall, without prejudice to the punishment under such section and rule of a person guilty of such offence, be deemed to be an illegal practice within the meaning of the said provisions. Sect. 36 (1). 38 & 39 Vict. c. 55.

* * * * *

(2.) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part Four of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

This section has no application to elections of county councillors, with the exception of sub-s. (2), which is substituted for a repealed provision in s. 92 of the Municipal Corporations Act, 1882, *ante*.

Clause (g) is not expressly repealed, but since the passing of the Local Government Act, 1894, it has no longer any application, as no election to an office now takes place by means of voting papers.

Clause (h) of sub-s. (1), which related to the powers of the Local Government Board to determine questions as to the right of a person to act as guardian, was repealed by the Local Government Act, 1894 (56 & 57 Vict. c. 73) s. 89.

37. The provisions of this Act, which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act. Exemption from provisions as to maximum expenses.

This section does not apply to elections of county councillors.

Repeal.

38. The Acts specified in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, but such repeal shall not affect anything duly done or suffered, or any right acquired or accrued, or any incapacity incurred, before the commencement of this Act; and any person subject to any incapacity under any enactment hereby repealed, or under any enactment for which such repealed enactment was substituted, shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act. Repeal of Acts.

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Commencement of Act.

39. This Act shall come into operation on the first day of October, one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

Extent of Act.

Act not to extend to Scotland or Ireland.

40. This Act shall not extend to Scotland or Ireland.

Duration of Act.

41. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer.

This Act has been continued from time to time, and is now in force until December 31st, 1898, by virtue of the Expiring Laws Continuance Act, 1897 (60 & 61 Vict. c. 54).

SCHEDULES.

FIRST SCHEDULE.

ELECTIONS to which this Act Extends.

In England.

Office.	Area.	Officer.	Rate.
Member of local board as defined by the Public Health Act, 1875.	Local Government district or ward of such district.	Clerk to the local board or person performing like duties.	The general district rate.
Member of Improvement Commissioners, as defined by the Public Health Act, 1875.	Improvement Act district or ward of such district.	Clerk to the Improvement Commissioners, or person performing like duties.	The general district rate or other rate out of which the expenses of the Improvement Commissioners are payable.
Guardian elected under the Poor Law Amendment Act, 1834.	Parish or ward of a parish or united parishes.	Clerk to the guardians, or person performing like duties.	The poor rate of the parish or united parishes.
Member of school board.	School district or division of the metropolis.	Returning officer of school board.	The school fund.

Section 38.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

As in England.

33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section thirty-three.
45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	Section seventy-seven from "corrupt practice" down to "or personation," and from "canvasser" down to "candidate at a municipal election." Section seventy-eight. Section seventy-nine. Section eighty. Section eighty-two. Section eighty-three. Section eighty-four. Section ninety-two, sub-section four, from "and those judges" down to the end of the sub-section. Section ninety-four, sub-sections five, six, seven, and eight. So much of section ninety-eight, sub-section two, as relates to the principles of taxation.

THIRD SCHEDULE.

Schedule 3.

PART I.

Enactments defining Corrupt Practices—Enactments defining the Offence of Bribery.

The Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), ss. 2 and 3.

2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly ;— Bribery defined.

(1.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

(2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3.) Every person who shall directly, or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses bonâ fide incurred at or concerning any election.

3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :—

(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other Bribery further defined.

Schedule 3.

person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.

(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 49.

Corrupt payment of rates to be punishable as bribery.

49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

It is beyond the scope of the present work to enter into a detailed discussion of the law relating to bribery and other corrupt practices. For information on this subject the reader is referred to works on the law of election. A few modern decisions may, however, be mentioned.

As to corrupt employment, see *Harding* v. *Stokes*, 1 M. & W. 354; 2 M. & W. 233; giving money after election, *R.* v. *Thwaites*, 1 E. & B. 704; 22 L. J. Q. B. 238.

Bribery includes not merely giving, but any promise or agreement to give, money or valuable consideration to a voter to influence his vote. The following acts have been held to come within the definition of this offence: the promise of a dinner (*Bodmin case*, 1 O'M. & H. 124); the gift of a pair of boots (*Tewkesbury case*, 3 O'M. & H. 97); distribution of coals (*Boston case*, 2 O'M. & H. 161); allowing a voter to shoot rabbits (*Launceston case*, 2 O'M. & H. 129); a promise to remunerate a voter for any loss of time (*Simpson* v. *Yeend*, L. R. 4 Q. B. 626; 38 L. J. Q. B. 313; 33 J.P. 677); a gift of money made under pretence of payment for work done (*Penryn case*, 1 O'M. & H. 130; *Truscott* v. *Bevan*, 44 L. T. (N.S) 64). A person guilty of several acts of bribery is liable to a penalty for each such act (*Milnes* v. *Bale*, L. R. 10 C. P. 591). A single case of bribery avoids an election (*Norwich case*, 54 L. T. (N.S.) 625).

"In order to make the payment of a rate for the purpose of enabling voters to be registered affect the election, you must prove that it was done corruptly; that it was done thereby to influence their votes, which in my judgment means to induce them to vote for the person on whose behalf the payment was made." *Per* MARTIN, B., *Cheltenham Election*, 1 O'M. & H. 63. In order to make a third person responsible for the payment of a rate, it must be proved that he gave authority to the person to do the act. The common law rules of agency, therefore, and not those of election law, apply to this case. *Wigan Election*, 1 O'M. & H. 190.

To offer a voter his travelling expenses if he will come and vote for a particular candidate is bribery. *Packard* v. *Collings*, 54 L. T. (N.S.) 619.

Enactment defining the Offence of Personation.

The Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24.

Personation defined.

24. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

See the notes to this section, *ante*, p. 214.

Enactments defining the Offences of Treating and Undue Influence. **Schedule 3.**

The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 1 and 2.

What is treating.

1. Any person who corruptly, by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

What is undue influence.

2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector, either to give or refrain from giving his vote at any election, shall be guilty of undue influence.

Treating is not the entertainment of equals by equals, but of an inferior by a superior with the object of securing the goodwill of the inferior. *Norwich Election Petition*, 54 L. T. (N.S.) 625.

The offence of treating is *corrupt* treating, viz., treating intended to affect the election (*Bewdley case*, 1 O'M. & H. 16; *Wallingford case*, *ib.* 59); charity will not avail as a cloak for corrupt treating (*Wigan case*, 4 O'M. & H. 13). And see as to charitable gifts, the *Haggerston case*, 5 O'M. & H. 68 (in which the judges differed as to the motive with which relief was distributed to the poor); *Lichfield*, *ib.* 27; *St. George's*, *ib.* 91.

Undue influence includes (besides force, either actual or threatened) threats of loss of employment, or of eviction by a landlord (*North Norfolk case*, 1 O'M. & H. 240; *Westbury case*, *ib.* 50; *Oldham case*, *ib.* 161; *Blackburn case*, *ib.* 204), and threats of spiritual damage exercised by ministers of religion or other persons having spiritual influence (*South and North Meath cases*, 4 O'M. & H. 130, 185).

Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 77.

Definitions.

77. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

PART II.

Enactments relating to Disqualification of Electors. Section 23.

The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 37 and 38.

Prohibition of disqualified persons from voting.

37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act or under the

Schedule 3.

35 & 36 Vict. c. 60. 45 & 46 Vict. c. 50.

Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

38.—(1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court (*a*) . . . to have been guilty, at an election, of any corrupt or illegal practice, the court . . . shall cause notice to be given to such person (*b*), and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself (*c*), and of calling evidence in his defence to show why he should not be so reported.

* * * * *

(5.) Every person who, after the commencement of this Act, is reported by any election court . . . to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty . . .

(6.) Where a person who is a justice of the peace is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect :—

(a.) If it appear to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses :

(b.) If it appears to an election court . . . that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court . . (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same ; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the

Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses : Schedule 3.

(c.) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his licence or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

* * * * *

(*a*) As to this report, see the Municipal Corporations Act, 1882, s. 93, *ante*, p. 303, and the Corrupt Practices Act, 1884, s. 8, *ante*, p. 347.

(*b*) Where after the trial of a municipal election petition, the commissioner has reported persons as having been guilty of corrupt practices, the High Court has no jurisdiction to set aside or amend his report upon the ground that the notice prescribed by the text had not been given to the persons reported. *Preece* v. *Harding*, 24 Q. B. D. 110 ; 54 L. J. Q. B. 82 ; 61 L. T. (N.S.) 837 ; 38 W. R. 350 ; 6 T. L. R. 65.

(*c*) The words "by himself" in the above section exclude the person charged from being heard either by counsel or solicitor. *R.* v. *Mansel Jones*, 23 Q. B. D. 29 ; 60 L. T (N.S.) 860 ; 37 W. R. 408 ; 53 J. P. 739.

FOURTH SCHEDULE.

Section 21.

Form of Declaration by Candidate as to Expenses.

I , having been a candidate at the election of councillor for the borough [or ward] of , on the day of [and my agents] do hereby solemnly and sincerely declare that I have paid for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

(Signature of declarant) *C.D.*

Signed and declared by the above-named declarant on the day of , before me.

(Signed) *E.F.*
Justice of the Peace for .

Rule 1.

GENERAL RULES.

The following are the general rules made pursuant to the Municipal Corporations Act, 1882, s. 100, and the Municipal Elections (Corrupt Practices) Act, 1884, s. 30, *ante*.

I. The presentation of a Municipal Election Petition shall be made by leaving it at the office of the Master for the time being nominated as prescribed officer, under the Parliamentary Elections Act, 1868, and such Master or his clerk shall (if required) give a receipt, which may be in the following form :—

Received on the day of at the Master's office a petition touching the election of *A.B.*, alderman, councillor, [etc., *as the case may be*] for the borough of purporting to be signed by [*insert the names of petitioners*].

C.D., Master's Clerk.

With the petition shall also be left a copy thereof for the Master to send to the town clerk, pursuant to section 88, sub-section (3), of the Act.

II. A municipal election petition shall contain the following statements :—

(1.) It shall state the right of the petitioner or petitioners to petition within section 88, sub-section (1), of the Act.

(2.) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

III. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the High Court or a judge thereof.

IV. The petition shall conclude with a prayer, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, (as the case may be,) and shall be signed by all the petitioners.

V. The following form, or one to the like effect shall be sufficient :—

In the High Court of Justice,

"The Municipal Corporations Act, 1882."

Election for [*state the place and office for which election held*], holden on the day of A.D.

The petition of *A.* of [*or* of *A.* of , and *B.* of *as the case may be*] whose names are subscribed.

(1) Your petitioner *A.* is a person who voted [*or* had a right to vote, *as the case may be*,] at the above election [*or* was a candidate at the above election]; and your petitioner *B.* [*here state in like manner the right of each petitioner*].

(2.) And your petitioners state that the election was holden on the day of A.D. , when *A.B.*, *C.D.*, and *E. F.* were candidates, and that *A.B.* and *C.D.* have been in the usual manner declared to be duly elected.

(3.) And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said *A.B.* and not duly elected, and that the election was void [*or* that the said *E.F.* was duly elected and ought to have been returned, *or as the case may be*].

(Signed)
A.
B.

VI. Evidence need not be stated in the petition, but the High Court or a judge thereof may order such particulars as may be necessary to prevent

surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the said High Court, and upon such terms as to costs and otherwise as may be ordered. Rule 6.

An order for particulars of the corrupt practices alleged in a municipal election petition was made at chambers in the following form:—That the petitioners do within a week deliver to the respondents particulars of all the persons alleged to have been bribed or treated, by whom, and when and where; and of all the persons alleged to have been retained or employed as canvassers and by whom, and when and where; and of all persons to whom money was paid or agreed to be paid, on account of the conveyance of voters to the poll, and by whom, and when, and where such moneys were paid or agreed to be paid. On appeal to the court, the order was varied by inserting the words "as far as known" at the end of each item of the particulars. *Maude* v. *Lowley*, L. R. 9 C. P. 165; 43 L. J. C. P. 103; 30 L. T. (N.S.) 168; 22 W. R. 649; 38 J. P. 280.

There is no inflexible rule of practice as to the period before the trial at which particulars must be delivered; the time fixed for delivery must depend on the circumstances of each case, such as the character of the division, its area and population, and the number of witnesses it is proposed to call. In the case of a small borough, seven days before trial is the time usually ordered. *Lenham* v. *Barber* (Hereford), 10 Q. B. D. 293; 48 J. P. 23. In populous places, ten days has frequently been the period. *Munro* v. *Balfour* (Manchester), [1893] 1 Q. B. 113; 67 L. T. (N.S.) 526; 41 W. R. 143; 57 J. P. 789; 9 T. L. R. 2; *Rushmore* v. *Isaacson* (Stepney), [1893] 1 Q. B. 118; 41 W. R. 124; 57 J. P. 790; 9 T. L. R. 47; *Barrow-in-Furness*, 2 T. L. R. 356; *Cremer* v. *Lowles* (Haggerston), [1896] 1 Q. B. 504; 65 L. J. Q. B. 289; 74 L. T. (N.S.) 42; 44 W. R. 629; 60 J. P. 100.

A petitioner cannot include in his particulars or give evidence of offences alleged to have been committed after the date of the petition, the petition not having been amended within the time limited for amendment. *Cremer* v. *Lowles*, *supra*.

Where a petition alleged that "the respondent by himself and other persons on his behalf was guilty of bribery, etc.," and the judge ordered particulars to be given of all persons alleged to have been bribed, etc., but refused to order particulars of the "other persons" alleged to have bribed, etc., the Exchequer Chamber held that the judge had exercised a right discretion and declined to interfere. *Beal* v. *Smith*, L. R. 4 C. P. 145; 38 L. J. C. P. 145; 17 W. R. 317.

VII. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial deliver to the Master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

This rule deals with cases where the petitioner demands a scrutiny and claims the seat. Particulars under r. 6 cannot be ordered as to matters to which r. 7 applies. *Munro* v. *Balfour*, *supra*.

As to the calculation of the six days in this and the next rule, see r. 37, *post*.

The trial of a municipal election petition was appointed for January 20th. A list of objections was tendered at the Rule Office of the Common Pleas on January 13th, and refused on the ground that it was too late, and it was taken away by the person tendering it. On the 14th a list of objections was left at the Rule Office, and one was also delivered to the respondent. It was held that the list was not delivered in due time according to the rule, and that the court had no jurisdiction to order delivery *nunc pro tunc* under the last clause of the rule. *Nield* v. *Batty*, 38 J. P. 264.

VIII. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 93rd section of the Act, sub-section (10), such respondent shall, six days

Rule 9. before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such list to all parties concerned ; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered.

This rule relates to recriminatory charges. See the Municipal Corporations Act, 1882, s. 93 (10) *ante*, and see note to last rule.

IX. With the petition the petitioner or petitioners shall leave at the office of the Master a writing, signed by him or them or on his or their behalf, giving the name of some person entitled to practise as a solicitor in the High Court of Justice, whom he or they authorize to act as his or their agent, or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to him or them may be left ; and if no such writing be left or address given, then notice of objection to the recognizances, and all other notices and proceedings may be given by sticking up the same at the Master's office.

X. Any person elected to any municipal office may at any time after he is elected send to or leave at the office of the Master a writing, signed by him or on his behalf, appointing a person entitled to practise as a solicitor in the High Court of Justice, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Master's office.

XI. The Master shall keep a book or books at his office, in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

XII. The Master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 88 of the Act, sub-section (3), and shall therewith send the name of the petitioner's agent, if any, and the address, if any, given as prescribed, and also the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general cost of the petition.

XIII. The time for giving notice of the presentation of a petition and of the nature of the proposed security shall be five days, exclusive of the day of presentation.

XIV. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent or by posting it in a registered letter to the address given at such time, that in the ordinary course of post, it would be delivered within the prescribed time.

Rule 14.

In other cases the service must be personal on the respondent, unless a judge of the High Court, on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

XV. In case of evasion of service the sticking up a notice in the office of the Master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

XVI. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Municipal Corporations Act, 1882, Security Fund," which shall be vested in and drawn upon from time to time by the Lord Chief Justice of England for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the Master's Office.

As to the security for costs, see the subsequent rules and s. 89 of the Municipal Corporations Act, 1882, *ante*, p. 300.

XVII. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

XVIII. All claims at law or in equity to money so deposited or to be deposited in the Bank of England shall be disposed of by the High Court of Justice or a judge thereof.

XIX. Money so deposited shall, if and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the High Court or order of a judge thereof.

XX. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court or judge may require.

XXI. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

XXII. Upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice of England for the time being.

XXIII. The draft of the Lord Chief Justice of England for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

XXIV. The recognizance as security for costs may be acknowledged before a judge of the High Court or the Master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

Rule 25.

XXV. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the day of , in the year of our Lord 18 , before me [*name and description*] came *A.B.*, of [*name and description as above prescribed*] and acknowledged himself [*or* severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [*or* the following sums], (that is to say) the said *C.D.* the sum of £ , the said *E.F.* the sum of £ , the said *G.H.* the sum of £ , and the said *J.K.* the sum of £ , to be levied on his [*or* their respective] goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is that if [*here insert the names of all the petitioners, and if more than one, add*, or any of them] shall well and truly pay all costs, charges and expenses in respect of the election petition signed by him [*or* them] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or* petitioners or any of them] under the Municipal Corporations Act, 1882, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed,

[*Signature of Sureties.*]

Taken and acknowledged by the above name [*name of sureties*] on the at , before me,

C.D.

A Justice of the Peace [*or as the case may be*].

XXVI. The recognizance or recognizances shall be left at the Master's office, by or on behalf of the petitioner, in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

The security may (unless the High Court or a judge thereof shall otherwise order on summons) be given to any amount not less than 300*l.*; but the High Court or a judge thereof may, on summons taken out within five days from the service of the notice of the nature and amount of the security, order that the same shall be increased within a time to be fixed in the order by further security to be given in the manner directed by the Act, for a further amount not exceeding with the amount for which security shall have been already given, 500*l.* And in default of compliance with such order, no further proceedings shall be had on the petition.

XXVII. The time for giving notice of any objection to a recognizance under the 89th section of the Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service, or in case of further security within five days after service of notice of the nature thereof, exclusive of the day of such service.

XXVIII. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

XXIX. Any objection made to the security shall be heard and decided by the Master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXX. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Master or judge may think fit.

XXXI. If an objection be allowed and the security be declared insufficient, the Master or judge shall in his order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order,

not including the day of the date, and such deposit shall be made in the manner already prescribed. Rule 31.

XXXII. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or judge, and in default of such order shall form part of the general costs of the petition.

XXXIII. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the High Court of Justice that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows :

In the High Court of Justice,
Municipal Corporations Act, 1882.

I *A.B.* of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or* personal] estate above what will satisfy my debts, of the clear value of £ .

Sworn, *etc.*

XXXIV. The order of the Master for payment of costs shall have the same force as an order made by a judge, and may be enforced in like manner as a judge's order in an ordinary proceeding in the High Court of Justice.

XXXV. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself, or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the Registrar, stamped with the official seal. Such order shall be filed by the party obtaining the same, and such particular by the party delivering the same.

XXXVI. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof.

XXXVII. The days mentioned in Rules VII. and VIII., and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

XXXVIII. When the last day for presenting petitions, or filing lists of votes or objections, under Rules VII. and VIII., or recognizances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day ; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

XXXIX. The Master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and

Rule 39.

the addresses to which notices may be sent, if any. The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Municipal Election List."

XL. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota or any one of them, who shall signify the same to the Master, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

In a county council election petition "clerk of the county council" must be substituted for "town clerk," and "electoral division" for "borough," in this and subsequent rules as to notices. See Municipal Corporations Act, 1882, s. 88 (3), *ante*, p. 299.

XLI. The sticking up of the notice of trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

XLII. The notice of trial may be in the following form :—

Municipal Corporations Act, 1882.

Election petition of
Borough of

Take notice that the above petition [*or* petitions] will be tried at on the day of and on such other subsequent days as may be needful.

Dated the

Signed, by order
A. B.,
The Master appointed under the above Act.

XLIII. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

XLIV. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

XLV. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

XLVI. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 97th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

See s. 97 of the Municipal Corporations Act, 1882, *ante*, p. 308.

XLVII. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent,

the High Court of Justice, or a judge, may either declare the election void or direct the trial to proceed. Notice of such order shall be forthwith given by the Master to the town clerk, and if the election be declared void the office shall be deemed to be vacant from the first day (not being a *dies non*) after the date of such order. Rule 47.

The court or judge may also make such order as to costs as may be just.

XLVIII. The application to state a special case may be made by motion in the High Court of Justice, or by a summons before a judge thereof.

XLIX. The title of the court held for the trial of a municipal election petition may be as follows :—

"Court for the trial of a municipal election petition for the borough of [*or as may be*] between petitioner and respondent,"

and it shall be sufficient so to entitle all proceedings in that court.

L. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister ; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

LI. The Commissioner may appoint a proper person to act as crier and officer of the court.

LII. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

LIII. The amount to be paid to any witness whose expenses shall be allowed by the Commissioner trying the petition shall be ascertained and certified by the registrar ; or in the event of his becoming incapacitated from giving such certificate, by the Commissioner.

LIV. The order of the court to compel the attendance of a person as a witness may be in the following form :—

Court for the trial of a municipal election petition for [*complete the title of the court*] the day of .

To *A. B.* [*describe the person*]. You are hereby required to attend before the above court at [*place*] on day of at the hour of [*or* forthwith, *as the case may be*], to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand, *A. B.*,

The Commissioner to whom the trial of the said petition is assigned.

LV. In the event of its being necessary to commit any person for contempt, the warrant may be as follows :—

At a court holden on at for the trial of a municipal election petition for the borough of before *A. B.*, one of the barristers appointed for the trial of municipal election petitions, pursuant to "The Municipal Corporations Act, 1882."

Whereas *C. D.* has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said *C. D.* for his said contempt to be imprisoned in the gaol for calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £

Rule 55.

and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C. D.* may be found, shall take the said *C. D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C. D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A. B.

Signed the day of

A. B.

LVI. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the High Court, as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the person to whom it is directed or any or either of them.

LVII. All interlocutory questions and matters, except as to the sufficiency of the security shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Municipal Corporations Act, 1882, as a judge in the ordinary proceedings of the High Court, and such questions and matters shall be heard and disposed of by any judge of the High Court.

LVIII. Notice of an application for leave to withdraw a petition shall be in writing, and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

Municipal Corporations Act, 1882.

Borough of . Petition of [*state petitioners*] presented day of .

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this day of

(Signed)

As to the withdrawal of a petition, see Municipal Corporations Act, 1882, s. 95, *ante*, p. 306. As to the statement of the parties negativing any corrupt arrangement, see *Johnson* v. *Rankin*, 5 C. P. D. 553; *Arnold* v. *Shaw*, 4 O'M. & H. 203; 9 T. L. R. 563; *Lichfield case*, 9 T. L. R. 92.

LIX. The notice of application for leave to withdraw shall be left at the Master's office.

LX. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall cause the same to be published in the borough to which it relates.

The following may be the form of such notice:—

Municipal Corporations Act, 1882.

In the election petition for in which is petitioner and respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the Master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out*].

And take notice, that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within

five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner. Rule 60.

(Signed)

LXI. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application if in fact made at the hearing.

LXII. The time and place for hearing the application shall be fixed by a judge, and whether before the High Court, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the court or judge directs.

LXIII. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 96, sub-section (1), of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the High Court, or a judge thereof, by motion or summons at chambers, to be sustituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the High Court or a judge thereof may allow.

LXIV. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

LXV. The manner of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Master signed by the respondent.

LXVI. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

LXVII. The time for applying to be admitted as a respondent in either of the events mentioned in the 97th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the High Court or a judge thereof may allow.

LXVIII. Costs shall be taxed by the Master, or at his request by any Master of the superior court upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered in like manner as if payable under a rule of court, judgment, or order of a judge in the ordinary proceedings in the High Court of Justice, or in case there be money

Rule 68. in the bank available for the purpose, then to the extent of such money by order of the Lord Chief Justice of England for the time being.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the High Court of Justice.

LXIX. No proceedings under the Municipal Corporations Act, 1882, shall be defeated by any formal objection.

LXX. Any rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up at the Master's office.

Dated the 17th day of April, 1883.

C. E. Pollock,
H. Manisty,
Henry C. Lopes,

The Judges for the time being on the rota for the trial of Parliamentary Election Petitions.

COUNTY ELECTORS ACT, 1888.

(51 VICT. CAP. 10.)

An Act to provide for the Qualification and Registration of Electors for the purposes of Local Government in England and Wales.

[16th May, 1888.]

WHEREAS it is expedient to make provision with respect to the qualification and registration of electors of any representative bodies (in this Act referred to as "county authorities") which may be established under any Act of the present session of Parliament for the purposes of local government in counties in England :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title and construction. 48 & 49 Vict. c. 15.

1. This Act may be cited as the County Electors Act, 1888.

The Registration Act, 1885, and the Parliamentary Registration Acts within the meaning of that Act, are in this Act referred to as the Registration of Electors Acts, and, together with this Act, may be cited as the Registration of Electors Acts, 1843 to 1888.

This Act shall be construed as one with the Registration of Electors Acts.

This Act deals with the registration of county electors, and was passed with a view to the establishment of county councils under the Local Government Act, 1888. It is amended in several points (noticed *infra*) by that Act.

Extension of burgess franchise to county electors outside municipal boroughs. 45 & 46 Vict. c. 50.

2.—(1.) For the purpose of the election of county authorities in England, the burgess qualification, that is to say, the qualification enacted by section nine of the Municipal Corporations Act, 1882, shall extend to every part of a county not within the limits of a borough, and a person possessing in any part of a county outside the limits of a borough such burgess qualification, shall be entitled to be registered under this Act as a county elector in the parish in which the qualifying property is situate.

See s. 9 of the Municipal Corporations Act, 1882, and the notes to that section, *ante*, p. 239.

(2.) Sections nine, thirty-one, thirty-three, and sixty-three of the Municipal Corporations Act, 1882, and any enactments of that or any other Act affecting the same, shall extend to so much

Sect. 2 (2).

of every county as is not comprised within the limits of a municipal borough in like manner as if they were herein re-enacted, with the substitution of "county" for "borough," and of "county elector" for "burgess," and with the other necessary modifications.

Section 9 of the Municipal Corporations Act, 1882, *ante*, deals with the qualification of burgesses and county electors; s. 31, *ante*, p. 270, and s. 33, *ante*, p. 271, contain some supplemental provisions relating to the same matter; and s. 63, *ante*, p. 290, provides that women shall have the right to vote.

Occupation of land of the value of 10*l.* to qualify.

3. Every person who is entitled to be registered as a voter in respect of a ten pounds occupation qualification within the meaning of the provisions of the Registration Act, 1885, which are set out in the schedule to this Act, shall be entitled to be registered as a county elector, and to be enrolled as a burgess in respect of such qualification, in like manner in all respects as if the sections of the Municipal Corporations Act, 1882, relating to a burgess qualification included the said ten pounds occupation qualification.

See the description of this qualification in the schedule, *post*. It has already been pointed out that this section creates an alternative qualification for a burgess or county elector. See notes (*c*) (*f*), *ante*, pp. 240, 242, as to the difference between the two qualifications.

Registration of county electors. 41 & 42 Vict. c. 26.

4.—(1.) The Registration of Electors Acts shall, so far as circumstances admit, apply to the enrolment of burgesses in a municipal borough to which the Parliamentary and Municipal Registration Act, 1878, does not apply, and to the registration of county electors within the meaning of this Act; and the lists of burgesses, and of county electors, and of occupation voters for parliamentary elections, shall, so far as practicable, be made out and revised together; and the Registration of Electors Acts shall accordingly—

(a.) Apply to every such municipal borough in like manner as if it were a borough to which sub-section two of section six of the Registration Act, 1885, applied (sub-section one of which section is hereby repealed), and revising assessors of such borough shall not be elected; and

(b.) Apply to every parish not situate in a municipal borough, in like manner as if such parish were a municipal borough to which the Parliamentary and Municipal Registration Act, 1878, applies, and the said lists of county electors and of occupation voters for parliamentary elections in such parish shall be made out in divisions, as provided in the said Act: Provided that a person whose name appears in any list of county electors or burgesses in a county may object to the name of any

other person on a list of county electors or burgesses for a parish in a county, and may oppose the claim of a person to have his name inscribed in any such list. Sect. 4 (1).

Before the passing of this Act, in boroughs to which the 41 & 42 Vict. c. 26, did not apply, the lists of burgesses were revised by the mayor and the revising assessors in manner provided by the Municipal Corporations Act, 1882. See s. 29 of that Act, *ante*, p. 267. The effect of the above provision is that in every parish, whether in a borough or not, and in every borough, the lists of county electors and burgesses will be made out in manner provided by the 41 & 42 Vict. c. 26, and revised by the revising barrister together with the lists of parliamentary voters. The occupation voters lists will always be made out in the three divisions prescribed by that Act. Divisions 1 and 2 will form the list of parliamentary voters, and 1 and 3 the register of county electors. See the Local Government Act, 1888, s. 76, sub-s. (3), *ante*, p. 148.

(2.) In the construction of the Registration of Electors Acts for the purpose of their application to a parish not situate in a municipal borough, there shall be made the variations following, and such other variations as may be necessary for carrying into effect the application, that is to say :—

(a.) Where such parish is not within a parliamentary borough, "parliamentary county" shall be substituted for "parliamentary borough;"

(b.) Where such parish is not within a parliamentary borough, the clerk of the peace shall perform the duties of and be substituted for the town clerk; but any notice required to be given to the town clerk by section twenty-seven of the Parliamentary and Municipal Registration Act, 1878, relating to the withdrawal and revival of objections, shall be given to the overseers and not to the clerk of the peace;

(c.) County elector shall be substituted for burgess;

(d.) Section nine of the Parliamentary and Municipal Registration Act, 1878, shall not apply to any parish which is not wholly situate in an urban district;

(e.) Where such parish is not within a parliamentary borough section twenty-one of the Parliamentary and Municipal Registration Act, 1878, shall not apply, and the lists and register of voters shall be made out alphabetically, but shall be framed in parts for polling districts and electoral divisions and for urban districts and for wards of urban and rural districts in such a manner that the parts may be conveniently compiled or put together to serve as lists for polling districts, and elections in urban districts and as electoral division or ward lists;

The above provision is amended by the Local Government Act, s. 76, sub-s. (1), *ante*, p. 147. It is there provided that the provisions of the above

Sect. 4 (2). section with respect to the framing of the lists and register of voters in parts shall extend to parishes situate within a parliamentary borough.

NOTE.

(f.) Where such parish is within a parliamentary borough—

This provision applies to a parish within a parliamentary borough, but it must not be forgotten that the whole section deals only with parishes not situate in municipal boroughs.

(i.) The overseers shall send to the clerk of the peace for the county two copies of the lists of voters at the same time at which they send copies to the town clerk ; and

(ii.) The town clerk shall cause to be printed such number of copies of the revised lists as the clerk of the peace may require, and shall transmit the same to the clerk of the peace, who shall deal with the same as with other lists of county electors in his county ; but

(iii.) Save as aforesaid, the clerk of the peace shall not act in relation to the registration of county electors in the said parish, and the town clerk of the parliamentary borough shall be the town clerk within the meaning of the Registration of Electors Acts and this Act in relation to such parish, and shall include in his precept to the overseers proper directions respecting the registration of the county electors within the meaning of this Act.

(g.) The lists of occupation voters and county electors shall be revised by the revising barrister for the parliamentary borough or county in which such parish is situate, and the revising barrister for revising the county electors lists for the whole or any part of an electoral division of any county shall, if so required by the county council, hold a court in that electoral division or at some convenient place in a division adjoining thereto.

(h.) The guardians of a union which is not wholly comprised in an urban district may, with the consent of the overseers of any parish or parishes within their union for which an assistant overseer has not been appointed, annually appoint a fit person to act as registration officer for such parish or parishes, and may remove any such person, and fill up any vacancy caused by death, resignation, or otherwise. Such registration officer shall perform all the duties of overseers of the parish or parishes for which he is appointed in respect of the registration of county electors and parliamentary voters, and the provisions of

the Registration of Electors Acts relating to overseers, including those providing for penalties, shall apply to him accordingly : Sect. 4 (2).

Provided that his remuneration shall be fixed and paid by the guardians of the union, and charged on the poor rates of the parish or parishes for which he is appointed, and (if he acts for more than one parish) in proportion to the number of persons on the registers made during the year of his appointment of county electors and parliamentary voters for each parish.

(3.) Notwithstanding anything in this Act contained, where a municipal borough or an urban district is co-extensive with any electoral division or divisions of a parliamentary county, the lists of voters may be directed by the county authority to be made out according to the order in which the qualifying premises appear in the rate book, and section twenty-one of the Parliamentary and Municipal Registration Act, 1878, shall apply to such borough or urban district, and where lists of voters are so made out nothing in this Act shall require such part of the county register as consists of these lists to be arranged alphabetically.

The term "county authority" here means the county council. See the Local Government Act, s. 76, sub-s. (2), *ante*, p. 148.

5. After the year one thousand eight hundred and eighty-eight, in every part of the metropolis, and in every part of a parliamentary borough, the whole or greater part of which is situate in the metropolis, the lists and registers of parliamentary voters, and of county electors, shall, unless the local authority otherwise direct, be arranged in the same order in which the qualifying premises appear in the rate book for the parish in which those premises are situate, or as nearly thereto as will cause those lists and registers to record the qualifying premises in successive order in the street or other place in which they are situate. Making out of lists and registers in the metropolis.

For the purpose of this section "metropolis" means the city of London and the parishes and places mentioned in Schedule (A), (B), and (C) of the Metropolis Management Act, 1855. 18 & 19 Vict. c. 120.

The local authority here referred to is the London County Council. See the Local Government Act, 1888, s. 3 (xii.), *ante*, p. 11.

6.—(1.) The lists of parliamentary voters, and of burgesses, and of county electors, shall be revised between the eighth day of September and the twelfth day of October, both inclusive, and shall be revised as soon as possible after the seventh day of September, and the eighth day of September shall be substituted in the Acts relating to the registration of parliamentary voters for the fifteenth day of September ; and the declarations under Revision of electoral lists.

Sect. 6 (1). section ten of the County Voters Registration Act, 1865, and section twenty-four of the Parliamentary and Municipal Registration Act, 1878, shall be sent to the clerk of the peace or town clerk on or before the fifth day of September.

28 & 29 Vict. c. 36.
41 & 42 Vict. c. 26.

This provision alters and makes uniform in counties and boroughs the dates for holding revision courts.

The declarations under 28 & 29 Vict. c. 36, s. 10, are declarations by county voters relating to change of abode or to objections founded on the second column of the list: those under 41 & 42 Vict. c. 26, s. 24, are declarations by borough voters as to misdescription.

6 & 7 Vict. c. 18.

(2.) In sections sixty-two and sixty-three of the Parliamentary Voters Registration Act, 1843 (relating to appeals from revising barristers in England), the "Michaelmas sittings of the High Court of Justice" shall be substituted for "the Michaelmas term," and forthwith after the fourth day of the Michaelmas sittings a court or courts shall sit for the purpose of hearing such appeals, and those appeals shall be heard and determined continuously and without delay, and any statement by the barrister for the purpose of any such appeal made in pursuance of section forty-two of the said Act may be made at any time within ten days after the conclusion of the revision, so that it be made not less than four days before the first day of the said Michaelmas sittings, and the statement need not be read in open court, but shall be submitted to the appellant, who, if he approves the same, shall sign the same as directed by the said section, and return the same to the barrister.

Roll of county electors.

7.—(1.) The clerk of the peace of every county shall make up a register of all persons registered as burgesses or county electors in the county, both for the county and for each electoral division into which the county is divided for the purpose of election of the county authority, and such number of copies as the clerk of the peace may require of the list of burgesses as revised shall be delivered by the town clerk to such clerk of the peace for the purpose of making up such register.

It will be the duty of the clerk of the peace to prepare the division registers, and when the lists as revised do not correspond with the electoral divisions he must, presumably, do what is necessary to divide and arrange them.

45 & 46 Vict. c. 50.

(2.) The Registration of Electors Acts, and sections forty-five, forty-eight, and seventy-one of the Municipal Corporations Act, 1882, shall apply for the purposes of this section, with the substitution of the clerk of the peace for town clerk, and of county register and division register for burgess roll and ward roll

respectively, and of electoral division for ward, and of county fund for borough fund. Sect. 7 (2)

See s. 45 of the Municipal Corporations Act, *ante*, p. 279; s. 48, *ante*, p. 283; and s. 71, *ante*, p. 293.

(3.) If district councils are established under any Act of the present session of Parliament, the clerk of every such council, not being the council of a borough, shall make up a register of all persons registered as county electors in his district, and where there are wards in a district, of all county electors in each ward, and he shall obtain from the clerk of the peace a sufficient number of copies of the list of the county electors so registered as may be required for the purpose of making up such register and supplying the same to the public, and the above-mentioned Acts and sections shall apply for that purpose, with the substitution of "clerk of the district council" for "town clerk," and of "district register" for "burgess roll" respectively.

This sub-section never came into force, district councils not being established in the session of 1888. They were, however, established by the Local Government Act, 1894, *post*.

(4.) Provided that nothing in this section shall prevent a county elector from being registered in more than one division register.

This prevents the application to county electors of the Municipal Corporations Act, 1882, s. 45, sub-s. (6), *ante*, p. 280. As to the effect of this sub-section, see note (*h*) on p. 281, *ante*, and the case of *Knill* v. *Towse* there referred to.

(5.) Where in pursuance of section four of the Registration Act, 1885, the revising barrister has power to erase the name of any person as a parliamentary voter from division one of the occupiers' list, such barrister, in lieu of erasing the name, shall place an asterisk or other mark against the name, and, in printing such list, the name shall be numbered consecutively with the other names, but an asterisk or other mark shall be printed against the name, and a person against whose name such asterisk or other mark is placed shall not be entitled to vote in respect of such entry at a parliamentary election, but shall have the same right of voting at an election of a county authority as he would have if no such mark were placed against his name. 48 & 49 Vict. c. 15.

See the alterations made in the above provisions with the object of distinguishing persons entitled to vote as parochial electors only, s. 44 of the Local Government Act, 1894, *post*.

(6.) If under any Act of the present session of Parliament establishing a council for a county any portion of another county

Sect. 7 (6).

is added to that county for the purpose of such election, such portion of the county register as relates to the electors having qualifying property in the said part so added shall be deemed to be part of the county register of the county for which such council is elected, and the clerk of the peace and other officers shall take such steps as may be necessary for giving effect to these enactments.

The reference in the text is explained by s. 92, sub-s. (2), of the Local Government Act, *ante*, p. 168.

Expenses.

8.—(1.) All expenses properly incurred and all sums received in carrying into effect the provisions of this Act and the Registration of Electors Acts with respect to county electors,—

(a.) If incurred or received by overseers, shall be respectively paid and applied as expenses and receipts of overseers under the Registration of Electors Acts in the case of the lists of parliamentary voters ; and

(b.) If incurred or received by the clerk of the peace or town clerk, shall be paid out of or into the county or borough fund ; and such expenses shall include all proper and reasonable fees and charges made and charged by him for the trouble, care, and attention of such clerk in the performance of the services and duties imposed on him by the said provisions.

The 54 Vict. c. 18, provides that where a parish is situate in a parliamentary but not in a municipal borough, one half of the expense and receipts under the Registration Acts in respect of such parish shall, as from the passing of the County Electors Act, 1888, be defrayed out of and paid to the county fund, and the other half defrayed out of and paid to the poor rate.

Remuneration of revising barristers and contribution by county authorities.

9. Every barrister appointed to revise any list of voters under the Parliamentary Voters Registration Act, 1843, shall be paid the sum of two hundred and fifty guineas by way of remuneration to him, and in satisfaction of his travelling and other expenses, and every such barrister, after the termination of his last sitting, shall forward his appointment to the Commissioners of Her Majesty's Treasury, who shall make an order for the payment of the above sum to every such barrister.

49 & 50 Vict. c. 42.

The maximum amount to be paid to an additional barrister in pursuance of the Revising Barristers Act, 1886, shall not exceed the amount authorised by this section to be paid to a revising barrister.

The sums so paid to a revising barrister or an assistant barrister shall be payable partly out of moneys provided by Parliament and partly by the county authorities, as hereinafter mentioned.

Sect. 9 (1).

(1.) There shall be annually paid by the county authority of every county out of the county fund into Her Majesty's Exchequer such sum as the Treasury certify to be one-half of the costs incurred for the payment of revising barristers at the then last revision of the list of parliamentary electors, burgesses, and county electors in that county.

(2.) The Treasury shall yearly ascertain the total costs of the revising barristers appointed for all the counties and boroughs on any circuit, and shall divide one-half of such cost among the counties comprised in such circuit in proportion to the number of burgesses and county electors in each county, and certify the amount which under such apportionment is due under this section from each county. The Treasury may vary such certificate if they think fit, but unless it is so varied the certificate shall be final.

(3.) So much of any Act as requires a payment out of the borough fund of any borough to a revising barrister, in respect of the revision of the burgess lists, shall be repealed, without prejudice to any payment or liability previously made or incurred.

It is provided by the Local Government Act, 1888, s. 76, sub-s. (4), *ante*, p. 148, that for the purposes of this section the county of Surrey and such portion of the county of London as is situated south of the Thames shall be deemed to be separate counties forming part of the south-eastern circuit; and such portion of the administrative county of London as is situate north of the Thames shall be deemed to form part of the county of Middlesex; and the county of Middlesex inclusive of that portion shall be a separate county on a circuit; but any sum payable by the London County Council in respect of either of the said portions of the county shall be paid for as a general county purpose.

Perpetuation of 49 & 50 Vict. c. 42.

Repeal of 6 & 7 Vict. c. 18, s. 59.

10.—(1.) Section four of the Revising Barristers Act, 1886, is hereby repealed, and that Act, as amended by this Act, shall be perpetual.

(2.) So long as a separate commission of assize is issued for the county of Surrey, that county shall be deemed to be a circuit within the meaning of section two, as well as of section one of the Revising Barristers Act, 1886.

(3.) An application to appoint an additional barrister under the said Act may be made at any time after the first day of September.

(4.) Section fifty-nine of the Parliamentary Voters Registration Act, 1843, is hereby repealed.

Sect. 11 (1).

Application of provisions of Act respecting county fund.

11.—(1.) In the event of a county authority being established under any Act of the present session, the provisions of this Act with respect to county authority, county, and county fund shall refer to the said county authority and to the county and county fund of such authority, and in case of any borough which, for the purposes of the said Act, is a county of itself, to the council of the borough and to the borough and borough fund.

(2.) In the event of a county authority not being established under any Act during the present session, the sums directed by this Act to be paid out of and into the county fund shall be paid by or under the direction of the local authority of every county quarter sessional area within the meaning of the Registration Act, 1885, in like manner as expenses or receipts of the clerk of the peace for such area under the Registration of Electors Acts, and by and under the direction of the council of every municipal borough which is also a parliamentary borough out of and into the borough fund, and the amount to be paid for revising barristers shall be apportioned between such quarter sessional areas and boroughs upon the principles above mentioned in this Act.

48 & 49 Vict. c. 15.

Separate list of persons residing within fifteen miles of county.

12. A list of persons occupying property in a county, and residing within fifteen miles, but more than seven miles from the county, shall be made out in accordance with section forty-nine of the Municipal Corporations Act, 1882, and that section shall apply as if it were herein re-enacted, with the substitution of "county" for "borough," and of "county elector" for "burgess," and of "clerk of the peace" for "town clerk."

The Local Government Act, s. 76, sub-s. (6), *ante*, p. 150, provides that nothing in the above section applies to any person occupying property in a borough. The meaning of these provisions is stated in the note to s. 49 of the Municipal Corporations Act, 1882, *ante*, p. 283.

Precepts by clerk of the peace.

13. All precepts, notices, and forms required for the purposes of the Registration of Electors Acts shall be altered in such manner as may be declared by Her Majesty in Council to be necessary for carrying into effect this Act, and clerks of the peace and town clerks shall alter their precepts and forms accordingly, and if clerks of the peace or town clerks have sent out precepts to the overseers before the passing of this Act, they shall send to them such supplemental precepts as are necessary or desirable for instructing them to carry into effect this Act.

The Local Government Act, s. 76, sub-s. (7), *ante*, p. 150, contains a similar provision giving power to the Queen in Council from time to time to alter the instructions, precepts, etc.

See now the Registration Order, 1895, which was published in the *London Gazette* of March 19th, 1895, and will be found in the S. R. O., 1895, p. 274.

Sect. 14.

Definitions.

14. In this Act, unless the context otherwise requires,—

The expressions "urban district" and "rural district" respectively mean an urban or rural sanitary district, also any urban or rural district under any Act of the present session of Parliament;

The expression "clerk of the peace" means, in the event of the establishment of a county authority, the person acting as clerk of that authority, and such person shall act as clerk of the peace throughout the whole county of such authority, both for the purposes of this Act and of the Registration of Electors Acts; subject nevertheless—

(a.) To the provisions of the Registration Act, 1885, respecting the case of any parliamentary county extending into more county quarter sessional areas than one, and

(b.) To the proviso that where at the passing of this Act any clerk of the peace acts as clerk of the peace under the Registration of Electors Acts he shall continue so to act, but shall act as deputy of the person acting as clerk of the peace by virtue of this Act.

Transitory provisions as to the year 1888.

15. In the year one thousand eight hundred and eighty-eight, notwithstanding anything in this Act or the enactments applied by this Act, the revision of the lists of parliamentary voters and county electors may be later than the twelfth day of October, so that it be not later than the thirty-first day of October, and the register of county electors shall be completed on or before the thirty-first day of December in the said year, and shall come into operation on the first day of January, one thousand eight hundred and eighty-nine, and shall continue in operation until the next register of county electors comes into operation.

In the year one thousand eight hundred and eighty-eight, notwithstanding anything in this Act or the enactments thereby applied, the clerk of the peace in a county may, if he thinks fit, instead of directing the occupiers' list to be made out in three divisions as provided by the Registration of Electors Acts, direct the overseers to make supplemental lists containing the names which would otherwise be contained in division two and division three of the occupiers' list respectively, and the names so contained in the supplemental list corresponding to division two shall be struck by the revising barrister out of division one of the list, and the supplemental list corresponding to division two or division three shall be treated as if it were division two or three of the said list, as the case may be.

Schedule.

SCHEDULE.

Registration Act, 1885.

DEFINITION OF TEN POUNDS OCCUPATION QUALIFICATION.

Ten pounds occupation qualification.

A person entitled to be registered as a voter in respect of a ten pounds occupation qualification in a borough, municipal or parliamentary—

(a.) Must during the whole twelve months immediately preceding the fifteenth day of July have been an occupier as owner or tenant of some land or tenement in a parish [or township] of the clear yearly value of not less than ten pounds ; and

(b.) Must have resided in or within seven miles of the borough during six months immediately preceding the fifteenth day of July ; and

(c.) Such person, or some one else, must during the said twelve months have been rated to all poor rates made in respect of such land or tenement ; and

(d.) All sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the fifth day of January next before the registration, or on account of any assessed taxes due before the said fifth day of January, must have been paid on or before the twentieth day of July.

If two or more persons jointly are such occupiers as above mentioned, and the value of the land or tenement is such as to give ten pounds or more for each occupier, each of such occupiers is entitled to be registered as a voter.

If a person has occupied in the borough different lands or tenements of the requisite value in immediate succession during the said twelve months, he is entitled in respect of the occupation thereof to be registered as a voter in the parish [or township] in which the last occupied land or tenement is situate.

PART III.

Statutes subsequent to the Local Government Act, 1888, affecting County Councils.

SEA FISHERIES REGULATION ACT, 1888.

(51 & 52 Vict. Cap. 54) (*a*).

An Act for the Regulation of the Sea Fisheries of England and Wales.

[24th December, 1888.]

* * * * *

Establishment of sea fisheries districts and local fisheries committees.

1.—(1.) The Board of Trade may from time to time on the application of a county council or borough council, by order,

(a) create a sea fisheries district comprising any part of the sea within which Her Majesty's subjects have by international law the exclusive right of fishing, either with or without any part of the adjoining coast of England and Wales; and

(b) define the limits of the district, and the area chargeable with any expenses under this Act; and

(c) provide for the constitution of a local fisheries committee for the regulation of the sea fisheries carried on within the district;

and may from time to time on like application by subsequent order vary any order made under this section, or unite two or more districts or parts of districts into a separate district, or dissolve any district that may have been formed.

(2.) The local fisheries committee for a sea fisheries district shall be a committee of a county council or borough council, or, if two or more councils appear to be interested, a joint committee of those councils, with the addition in each case of such members representing the fishing interests of the district, including members representing any board of salmon conservators having jurisdiction within the district, as may be directed by the order creating the district, such number of fishery members not being in the aggregate less than the number of members of the county or borough councils provided by the order creating the district. The fishery members shall hold office for the same time as the members appointed by the county or borough council or councils, and any vacancy amongst the fishery members which may arise in the interval shall be filled up

(*a*) Under this Act a county council may be empowered to appoint or join in appointing a local fisheries committee for the regulation of sea fisheries within a fisheries district created by Order of the Board of Trade. This Act is amended by Part II. of 54 & 55 Vict. c. 37, and by 57 & 58 Vict. c. 26, which enactments, together with this Act, are comprised in the title "The Sea Fisheries Regulation Acts, 1888 to 1894." The amending Acts are set out *post*.

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by a representative of the fishing interest in respect of which it occurs. The members representing a board of salmon conservators shall be appointed by that board.

(3.) The law relating to committees and joint committees of county councils (*b*) shall, subject to the provisions of the order constituting a local fisheries committee, apply to the local fisheries committee in like manner as if the powers and duties of that committee were powers and duties transferred by the Local Government Act, 1888, to the council or councils represented on the committee and delegated to the committee by the said council or councils, and as if any borough council represented on the committee were a county council.

51 & 52 Vict. c. 41.

(4.) Every order made by the Board of Trade under this section shall be laid for thirty days before both Houses of Parliament while in session, and if either House within that period resolves that the whole or any part of the order ought not to be in force the same shall not have any force, without prejudice nevertheless to the making of any other order in its place. Subject to any such resolution every order so made shall come into force at the expiration of the thirty days aforesaid.

(5.) In case a county council or borough council to whom application has been made by not less than twenty inhabitant ratepayers interested in sea fisheries, refuse or neglect to apply to the Board of Trade to create a sea fisheries district for the space of six months from the date of the application, the persons making such application shall, within twelve months from the date thereof, be entitled to apply to the Board of Trade for an order establishing such sea fisheries district, and the Board of Trade shall, unless the council can show to their satisfaction that such order should not be made, proceed as if an application had been made by the council.

(6.) Before making any order creating a sea fisheries district the Board of Trade shall cause the draft of such order to be locally published in such manner as they direct, and shall, if any objections are made to such orders, or any of the provisions thereof, cause such local inquiry to be held as may in their opinion be required. Due notice of such inquiry shall be given by advertisement or otherwise, and the report of the person holding such inquiry shall, if the order is made, be laid with the order before both Houses of Parliament.

Byelaws for regulation of sea fisheries.

2.—(1.) A local fisheries committee for a sea fisheries district may from time to time, subject to such regulations as may be made in that behalf by the Board of Trade, make bye-laws (*c*) to be

(*b*) As to committees and joint committee of county councils, see ss. 28 (2), 81, and 82 of the Local Government Act, 1888, and s. 22 of the Municipal Corporations Act, 1882, *ante*, pp. 64, 155—158, and 260. The form of financial statement to be submitted by fisheries committees is prescribed by an order of the Local Government Board, January 26th, 1893; S. R. O., 1893, p. 67.

(*c*) As to the necessity for confirmation of these bye-laws, see s. 4, *infra*. The purposes for which the bye-laws may be made are extended by 54 & 55 Vict. c. 37, s. 7, and 57 & 58 Vict. c. 26, *post*.

observed within their district, for all or any of the following purposes, namely,— Sect. 2 (1).

(a.) For restricting or prohibiting, either absolutely or subject to such regulations as may be provided by the bye-laws, any method of fishing for sea fish or the use of any instrument of fishing for sea fish, and for determining the size of mesh, form, and dimensions of any instrument of fishing for sea fish;

(b.) For constituting within their district any district of oyster cultivation for the purposes of section four of the Fisheries (Oyster, Crab, and Lobster) Act, 1877 (*d*); 40 & 41 Vict. c. 42.

(c.) For directing that the proviso to section eight of the Fisheries (Oyster, Crab, and Lobster) Act, 1877, which permits edible crabs in certain conditions or under a certain size to be taken by or be in the possession of any person if those crabs are intended for bait for fishing, shall not apply (*e*);

(d.) For repealing or amending any order made under section ten of the Fisheries (Oyster, Crab, and Lobster) Act, 1877, or under the Fisheries (Oyster, Crab, and Lobster) Act (1877) Amendment Act, 1884 (*f*); 47 & 48 Vict. c. 26.

(*d*) Section 4 of 40 & 41 Vict. c. 42, makes it an offence to sell, expose, consign, or buy for sale, oysters during certain seasons of the year; but a person is not to be guilty of an offence under that section if he satisfies the Court that the oysters alleged to have been sold, etc., in contravention of the section: "(1) Were taken within the waters of some foreign state; or (2) were preserved in tins or otherwise cured; or (3) were intended for the purpose of oyster cultivation within the same district in which the oysters were taken, or were taken from any place for cultivation with the sanction of the Board of Trade; and for this purpose the Thames estuary, bounded by a line drawn from Oxford Ness to the North Foreland, shall be deemed to be a district, and also any other area for the time being constituted a district for the purposes of this section by an Order of the Board of Trade; and also where the place at which the oysters are taken is not within any such district as aforesaid, so much of the area within ten miles of the said place where the oysters are taken as is not included in any other such district as aforesaid, and the Board of Trade may from time to time make, and when made, revoke or vary an order for the purposes of this section." A local fisheries committee may, under the provision in the text, constitute within their district a district of oyster cultivation for the purposes of paragraph (3), above set out.

A local fisheries committee may enforce within their district the provisions of the 40 & 41 Vict. c. 42, and of any other Act relating to sea fisheries; see 54 & 55 Vict. c. 37, s. 9. *post.*

(*e*) Section 8 of the Act referred to, makes it an offence to take, have in possession, sell, or expose, consign, or buy for sale, edible crabs under certain dimensions and in certain conditions; the nature of the exceptions contained in the proviso is sufficiently stated in the text. The local fisheries committee may by their bye-laws abolish the exception in their district. A similar power was given to the Board of Trade as to any area named in their Order under 47 & 48 Vict. c. 26; but this Act is repealed by s. 16, *infra.*

(*f*) Section 10 of 40 & 41 Vict. c. 42, empowers the Board of Trade by order to restrict or prohibit, either entirely or subject to any exceptions and regulations, the fishing for and taking of edible crabs and lobsters, or either of them, or any description of them or either of them, within the area named in the Order during such period of years, or during such period either in every year, or in such number of years as may be limited by the Order, and may by the order provide for enforcing the order, and any prohibition, restriction, or

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(e.) For prohibiting or regulating the deposit or discharge of any solid or liquid substance detrimental to sea fish or sea fishing; and

(f.) For repealing or amending any bye-law made in pursuance of this Act.

(2.) A bye-law made in pursuance of this Act may provide for its application either to the whole or any specified part or parts of the district for which it is made, and either during the whole or any specified part or parts of the year.

Penalties for breach of bye-laws.

3. A local fisheries committee may, by their bye-laws, impose as penalties for the breach of any bye-law fines not exceeding for any one offence the sum of 20*l.*, and in the case of a continuing offence the additional sum of 10*l.* for every day during which the offence continues, and in any case forfeiture of any fishing instrument used or sea fish taken in contravention of, or found in the possession of a person contravening, any bye-law; and any such penalties may be recovered and enforced on summary conviction (*g*).

Confirmation of bye-laws.

4.—(1.) A bye-law made in pursuance of this Act shall not be of any validity until it has been confirmed by the Board of Trade.

(2.) The Board of Trade may, if they think fit, before confirming a bye-law made in pursuance of this Act, cause such local inquiry as they think fit to be held with respect to the byelaw, and may, in any case, confirm any such byelaw, either without modifications, or with such modifications as may be assented to by the local fisheries committee.

Copies and evidence of bye-laws.

5.—(1.) The local fisheries committee shall cause copies of all bye-laws made by them under this Act, and for the time being in force, to be kept posted up in some conspicuous place or places within their district, and shall supply copies of all such byelaws to any applicant, on payment of a sum not exceeding one penny for each copy.

(2.) The production of a copy of any bye-law made in pursuance of this Act, purporting to be signed by a secretary or assistant secretary of the Board of Trade, shall be conclusive evidence of the bye-law and of the due making and confirmation thereof.

Appointment and powers of fishery officers.

6.—(1.) Subject to any restrictions or conditions as to expenditure made by the council or councils by whom a local fisheries committee

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regulation contained therein by fines not exceeding twenty pounds for each offence. Such an order may from time to time be varied or revoked by a subsequent order, and nothing in such order shall apply to a several right of fishery. Such an order may be repealed or amended by bye-laws under the provisions in the text, and such bye-laws may also repeal or amend an order under the repealed Act, 47 & 48 Vict. c. 26, as to which, see note (*e*), *ante*.

(*g*) As to offences committed on the coast or at sea beyond the ordinary jurisdiction of a court of summary jurisdiction, see 54 & 55 Vict. c. 37, s. 8, *post*.

is appointed (*h*) the committee may appoint such fishery officers as they deem expedient for the purpose of enforcing the observance within their district of bye-laws made by the committee: Provided that nothing in this section shall exempt the coastguard and Admiralty officers from their statutory duty in enforcing the laws and regulations affecting vessels engaged in sea fishing. Sect. 6 (1).

(2.) For the purpose of enforcing those bye-laws every such fishery officer may within the limits of the district, or of any adjoining sea fisheries district or district under the jurisdiction of salmon conservators, or of a harbour authority,—

(a.) Stop and search any vessel or vehicle used within the district in fishing or in conveying either fish or any substance the deposit or discharge of which is prohibited or regulated by any such bye-laws; and

(b.) Search and examine all instruments used in catching or carrying fish; and

(c.) Seize any sea fish or instrument liable to be forfeited in pursuance of any such bye-laws.

(3.) If any person without reasonable excuse (proof whereof shall lie on him) refuses to allow any such officer to exercise the powers conferred upon him by this Act, or resists or obstructs any such officer in the performance of his duty, he shall for every such offence be liable on summary conviction to a fine not exceeding five pounds.

(4.) For the enforcement of the provisions of any such bye-laws every such officer shall be deemed to be a constable, and to have the same powers and privileges and be subject to the same liabilities as a constable duly appointed has and is subject to in his constablewick at common law or by statute.

(5.) A local fisheries committee may, with the consent of any board of salmon conservators, appoint as an officer of the committee any officer of the board; and a board of salmon conservators may, with the consent of a local fisheries committee, appoint as an officer of the board any officer of the committee.

Power to enter suspected places.

7. It shall be lawful for any justice of the peace upon information on oath that there is probable cause to suspect any breach of any bye-law made under this Act to have been committed on any premises, or that any sea fish or instrument liable to be forfeited in pursuance of any such bye-law is concealed on any premises, by warrant under his hand and seal to authorize and empower any fishery officer appointed under this Act, or any police officer, to

(*h*) Restrictions and conditions as to expenditure in connection with the appointment of a particular officer cannot be made after the officer has been appointed. *Semble*, that when a local fisheries committee has been appointed by more councils than one, it is open to any one of such councils to make restrictions or conditions as to expenditure under this section, without the assent of the other councils. *R.* v. *Plymouth* (*Mayor, etc., cf*), [1896] 1 Q. B. 158; 65 L. J. Q. B. 258; 44 W. R. 620.

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enter the premises for the purpose of detecting the offence or the concealed fish or instrument at such time or times in the day or night as in the warrant may be mentioned, and to seize any such fish or instruments which may be found on the premises: Provided that the warrant shall not continue in force for more than one week from the date thereof.

Returns by local fisheries committees.

8. Every local fisheries committee shall collect such statistics relating to the sea fisheries within the district of the committee and make such returns to the Board of Trade as to the proceedings of the committee under this Act, and as to the sea fisheries aforesaid as the Board of Trade may reasonably require: Provided that any expenses which the local fisheries committee may be required by the Board of Trade to incur in the collection of statistics shall be borne by moneys to be provided by Parliament.

Annual meeting of representatives of local committees.

9. The Board of Trade shall convene a meeting composed of not less than one representative selected by each of the local fisheries committees at least once in each year, to confer with the heads of the Fishery Department of the Board of Trade, and for consultative purposes on matters relating to this Act.

Expenses of committee.

10. The expenses of a local fisheries committee, so far as payable by a county council, shall, according as is provided by the order providing for the constitution of the local fisheries committee, be general or special expenses within the meaning of the Local Government Act, 1888 (*i*), and if special expenses shall be charged in manner directed by the order, and the expenses of the committee, so far as payable by the council of a borough, shall be paid out of the borough rate or borough fund.

51 & 52 Vict. c. 41.

Contents of order for constitution of committee.

11. An order providing for the constitution of a local fisheries committee may contain such regulations consistent with this Act with respect to the number and mode of appointment of the members of the committee, and with respect to other matters relating to the constitution of the committee, as may seem expedient to the Board of Trade.

Relations of local fisheries committees to conservators under Salmon Acts and harbour authorities.

12.—(1.) Where a proposed sea fisheries district will adjoin or overlap the district of a board of salmon conservators, the Board of Trade shall, by the order defining the limits of the sea fisheries district, draw a line at or near the mouth of every river or stream flowing into the sea, or into any estuary within those limits, or at the option of the Board of Trade at or near the mouth of any estuary within those limits, and the sea fisheries district shall not extend into any such river, stream, or estuary above that line; but the order may provide that with respect to any such river, stream, or

(*i*) As to general and special expenses of a county council, see s. 68 of the Local Government Act, 1888, *ante*, p. 130. As to contributions to expenses of salmon conservators under this Act, see note to s. 12 (1), *infra*.

estuary, or any area subject to a bye-law made under section thirty-nine, sub-section eight, of the Salmon Fishery Act, 1873, the conservators shall have the powers of a local fisheries committee (*k*). Sect. 12 (1).

(2.) Where an area is under the jurisdiction of salmon conservators, or of a harbour authority, and an application for the creation of a sea fisheries district comprising that area or any part thereof has not been made or has been refused, the Board of Trade may, if they think fit, by order, confer on the conservators or harbour authority the powers of a local fisheries committee with respect to that area, and may vary or rescind any such order if the area, or any part thereof, is subsequently comprised in a sea fisheries district.

(3.) A local fisheries committee shall not have jurisdiction within any area for the time being subject to a bye-law made under section thirty-nine, sub-section eight, of the Salmon Fishery Act, 1873 (*l*).

(4.) Where salmon conservators or a harbour authority have the powers of a local fisheries committee in pursuance of this section, those powers shall be exercised subject to the same conditions as if exercised by a local fisheries committee, and the provisions of this Act shall apply in the case of bye-laws made or officers appointed in exercise of any such powers as if the byelaws were made or the officers appointed by a local fisheries committee.

Saving for several fisheries, etc.

13. Nothing in this Act shall authorize a local fisheries committee to make any bye-law

(a) prejudicially affecting any right of several fishery, or any right on, to, or over any portion of the seashore, where any such right is enjoyed by any person under any local or special Act of Parliament, or any Royal charter, letters patent, prescription, or immemorial usage, without the consent of that person; or

(b) affecting any bye-law made, or to be made, by a board of salmon conservators, and for the time being in force within the district of the committee, or restricting the power of a board of salmon conservators to make any such bye-law; or

(c) affecting any power of a sanitary or other local authority to discharge sewage in pursuance of any power given by a general or local Act of Parliament, or by a Provisional Order confirmed by Parliament.

(*k*) Under s. 39 (8) of the Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), a board of conservators may make bye-laws (subject to confirmation), "to prohibit the use of nets within a certain distance of the mouth of any river, and of the point of confluence of rivers in any part of the district (not being a several fishery), and to erect and fix posts, buoys, and landmarks to indicate such distances respectively."

The 54 & 55 Vict. c. 37, s. 10, *post*, empowers a county or borough council to pay or contribute to any expenses incurred by salmon conservators under this Act.

(*l*) See the preceding note.

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Definitions.

14. For the purposes of this Act—

The expression "county council" shall mean a county council established under the Local Government Act, 1888.

The expression "borough council" shall mean the council of any municipal borough containing, according to the census of one thousand eight hundred and eighty-one, a population of not less than twenty thousand.

The expression "sea fish" shall not include salmon as defined by any Act relating to salmon, but, save as aforesaid, shall mean fish of all kinds found in the sea, and shall also include lobsters, crabs, shrimps, prawns, oysters, mussels, cockles and other kinds of crustaceans and shell fish.

The expression "sea" includes the coast up to high-water mark.

The expression "vessel" includes ship, boat, lighter, and craft of every kind, whether stationary or navigated by steam or otherwise.

The expression "person" includes any body of persons corporate or unincorporate.

The expression "fishing interests" includes all persons interested in fisheries, either as owners of fisheries or interests therein, fishermen, fishing-boat owners, smack owners, fish curers, fish merchants, or otherwise, and any board of salmon conservators.

The expression "salmon conservators" means conservators under the Salmon and Freshwater Fisheries Acts, 1861 to 1886, or any of them.

The expression "harbour authority" means any body corporate, persons, or person being or claiming to be proprietors or proprietor of, or entrusted with the duty of improving, managing, maintaining, or regulating any harbour.

Extent of Act.

15. This Act shall not extend to Scotland or Ireland.

Repeal.

16. The Acts described in the schedule to this Act are hereby repealed, without prejudice to any order made or thing done under any such Act before the passing of this Act.

Short title.

17. This Act may be cited as the Sea Fisheries Regulation Act, 1888.

SCHEDULE.

ACTS REPEALED.

Session and Chapter.	Short Title.
44 & 45 Vict. c. 11.	The Sea Fisheries (Clam and Bait Beds) Act, 1881.
47 & 48 Vict. c. 26.	The Fisheries (Oyster, Crab, and Lobster) Act (1877) Amendment Act, 1884.

WEIGHTS AND MEASURES ACT, 1889.

(52 & 53 VICT. CAP. 21) (*m*).

An Act for amending the Law relating to Weights and Measures, and for other purposes connected therewith [26th July, 1889.]

WHEREAS it is expedient to amend the Weights and Measures Act, 1878 (herein-after referred to as the principal Act), and the law relating to the sale of coal: 41 & 42 Vict. c. 49.

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PART I.

Weights and Measures.

Verification of weighing instruments.

1.—(1.) Every weighing instrument used for trade (*n*) shall be verified and stamped by an inspector of weights and measures with a stamp of verification under this Act.

(2.) Every person who, after the expiration of twelve months from the commencement of this Act, uses, or has in his possession for use, for trade (*n*) any weighing instrument not stamped as required by this Act, shall be liable to a fine not exceeding two pounds, or in the case of a second offence five pounds.

(3.) The power of making bye-laws conferred by section fifty-three of the principal Act shall extend to the making of bye-laws for giving effect to this section (*o*).

(*m*) The county council is the local authority for the execution of the Acts relating to weights and measures in their county. Local Government Act, 1888, s. 3 (xiii.), and notes, *ante*, p. 12. This Act is an amendment of the principal Act, the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), and is to be construed as one with that Act; see s. 34, *infra*. The subject is also dealt with by three subsequent Acts, the 55 & 56 Vict. c. 18, which authorizes county and borough councils to purchase franchises of weights and measures, the 56 & 57 Vict. c. 19, which deals with the contributions of certain boroughs towards the expenses of executing the Weights and Measures Acts, and the 60 & 61 Vict. c. 46, which legalizes the use of weights and measures of the metric system. These Acts are set out *post*.

(*n*) Trade is defined by s. 19 of the Weights and Measures Act, 1878, as follows:—"Every contract, bargain, sale, or dealing made or had in the United Kingdom for any work, goods, wares, or merchandise, or other thing which has been or is to be done, sold, delivered, carried, or agreed for by weight or measure, shall be deemed to be made and had according to one of the imperial weights or measures ascertained by this Act, or to some multiple or part thereof, and if not so made or had shall be void; and all tolls and duties charged or collected according to weight or measure shall be charged and collected according to one of the imperial weights or measures ascertained by this Act, or to some multiple or part thereof. Such contract, bargain, sale, dealing, and collection of tolls and duties as is in this section mentioned, is in this Act referred to under the term 'trade.'"

A lead manufacturer and smelter had upon her works a beam scale used for the purpose of checking the weight of the produce of the works. Invoices bearing the weights so obtained were sent to the purchasers of the lead and the railway company who carried it. *Held*, that the scale was used for trade, and must be stamped under the provision in the text. *Crick* v. *Theobald*, 64 L. J. M. C. 216; 72 L. T. (N.S.), 807; 59 J. P. 502; 11 T. L. R. 445. And see the cases cited in the note to s. 3, *infra*.

(*o*) Section 53 of the Weights and Measures Act, 1878, provides that a local authority, from time to time, with the approval of the Board of Trade, may

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(4.) Section thirty-two of the principal Act shall apply to weighing instruments in like manner as it applies to weights and measures (*p*).

Local verification of metric weights and measures.

2. The Board of Trade may, if they think fit, at the expense of the local authority, deposit with any inspector of weights and measures copies of any of the metric standards in their custody, and cause to be verified with any copy so deposited any metric weights and measures which can under section thirty-eight of the principal Act be compared with the metric standards in their custody (*q*).

Amendment of 41 & 42 Vict. c. 49, ss. 25 and 26.

3. The fine for a second or subsequent offence under section twenty-five or section twenty-six of the principal Act shall be a sum not exceeding twenty pounds, and the provisions of the said section twenty-six with respect to forfeiture shall apply to weighing instruments in like manner as they apply to weights, measures, scales, balances, and steelyards (*r*).

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make, revoke, alter, and add to bye-laws for regulating the comparison with the local standards of such authority, and the verification and stamping of weights and measures in use in their county or borough, and for regulating the local comparison of the local standards of such authority, and generally for regulating the duties under that Act of the inspectors appointed by the local authority, or of any of those inspectors. Such bye-laws may impose fines not exceeding twenty shillings for the breach of any bye-law, to be recovered on summary conviction. The Board of Trade, before approving any such bye-laws, shall cause them to be published in such manner as they think sufficient for giving notice thereof to all persons interested.

(*p*) Section 32 of the Act of 1878 imposes penalties upon persons forging or counterfeiting stamps used for stamping under the Act any measure or weight, or wilfully increasing or diminishing a weight so stamped, or knowingly using, selling, etc., a measure or weight with a forged or counterfeit stamp thereon, or a weight so increased or diminished.

(*q*) Section 38 of the Act of 1878 enables the Board of Trade, if they think fit, to cause to be compared with the metric standards in their custody and verified all metric weights and measures which are submitted to them for the purpose, and are of such shape and construction as may be from time to time in that behalf directed by the Board, and which the Board are satisfied are intended to be used for the purpose of science or of manufacture, or for any lawful purpose not being for the purpose of trade within the meaning of that Act. But see as to this section 60 & 61 Vict. c. 46, s. 2, sub-s. (2), *post*.

(*r*) Section 25 of the Act of 1878 imposes a penalty (not exceeding 5*l*., or in case of a second offence, 10*l*.) upon any person using or having in his possession for use for trade any false or unjust weight, measure, scale, balance, steelyard, or weighing machine. Section 26 imposes the like penalties upon every person wilfully committing or party to a fraud in the use of any of the instruments above mentioned. In either case, the weight, measure, scale, balance or steelyard is liable to be forfeited, but there is no such provision as to weighing machines. By the text, the maximum fine for a second or subsequent offence is raised from 10*l*. to 20*l*., and the provisions of s. 26 as to forfeiture are extended to weighing instruments, and see the next section of this Act.

Where an information under s. 25 was laid against a postmaster, who traded as a baker on the same premises, for having an unjust scale in his possession for use for trade, the scale being the property of the Crown and belonging to the Post Office, a prohibition was granted on the ground that the Act did not apply to scales the property of the Crown. *R.* v. *Kent* (*Justices of*), 24 Q. B. D. 181; 59 L. J. M. C. 51; 62 L. T. (N.S.) 114; 38 W. R. 253; 54 J. P. 453; 17 Cox C. C. 61. Where a seller of milk sent it by train in his

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Liability to imprisonment in cases of fraud.

4. Where a person is convicted under any section of the principal Act or this Act of a second or subsequent offence, and the court by which he is convicted is of opinion that such offence was committed with intend to defraud, he shall be liable, in addition to or in lieu of any fine, to be imprisoned with or without hard labour for a term not exceeding two months.

Repeal of 41 & 42 Vict. c. 49, ss. 16, 46.

5. The following sections of the principal Act are hereby repealed :

(a.) Section sixteen, relating to the measure of capacity for goods formerly sold by heaped measure ;

(b.) Section forty-six, giving power to stamp measures made partly of metal and partly of glass.

New denominations of standards.

6. The Board of Trade shall from time to time cause such new denominations of standards for the measurement of electricity, temperature, pressure, or gravities as appear to them to be required for use for trade to be made and duly verified, and those new denominations of standards when approved by Her Majesty in Council shall, whether derived from imperial or from other standards, be Board of Trade standards, in like manner as if they were mentioned in the Second Schedule to the principal Act.

Working standards.

7. Any local authority may provide for the use of their officers working standards of measure and weight, and scale-beams of such material and in such form as the Board of Trade may approve, and those standards may, if verified in such manner as the Board of Trade from time to time direct, be used for the inspection and verification of weights and measures as if they were local standards.

Power for Board of Trade to take fees.

8.—(1.) The Board of Trade may, on the comparison and verification of weights and measures, not being standards for the use of a local authority or their officers, and not being coin weights, and on the examination or testing of weighing or measuring instruments, charge and take such fees as may from time to time be approved by the Treasury.

(2.) The fees taken under this section may be applied in such manner and to such extent as the Treasury may from time to time direct in aid of money provided by Parliament for expenses of the Board of Trade under this Act, and if and as far as not so applied shall be paid into the Exchequer.

General regulations.

9.—(1.) Every local authority within the meaning of this Act, and every other person or authority having power to appoint inspectors of weights and measures, shall, with the approval of the Board of

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own churns, which were, by agreement with the railway company, fitted with gauges to indicate the number of gallons they contained, and the purchaser was entitled to have the churns regauged when he deemed it necessary, it was held that the churns were measures which the seller had in his possession for use for trade, and that he was properly convicted under s. 25, two of the churns having been proved to contain less than the quantity they purported to contain : *Harris* v. *London County Council*, [1895] 1 Q. B. 240; 64 L. J. M. C. 81; 71 L. T. (N.S.) 844 ; 11 T. L. R. 113 ; 18 Cox C. C. 65.

Sect. 9 (1).

Trade, make for the guidance of the inspectors appointed or employed by that authority or person, and may from time to time with the like approval amend or rescind general regulations with respect to—

(a.) The procedure to be observed in the verification and stamping of weights, measures, and weighing and measuring instruments, including the prohibition of stamping in cases where the material or mode of construction appears likely to facilitate the commission of fraud; and

(b.) The inspection of weights, measures, and weighing and measuring instruments.

(2.) If any such authority or person, on being required by the Board of Trade to make, amend, or rescind any general regulations in pursuance of this section fails to comply with the requirement, the Board of Trade may make, amend, or rescind such regulations, and any regulations so made or amended shall have effect as if made by that authority or person.

(3.) All regulations made under this section shall be duly observed and kept published in such manner as the Board of Trade from time to time shall direct.

Provision as to local inquiries.

10.—(1.) The Board of Trade may from time to time appoint an officer to hold a local inquiry with respect to the administration of the law relating to weights and measures within the jurisdiction of any local authority.

(2.) The appointment may be made either on the application of the local authority or without such application, but with the concurrence of the Treasury.

(3.) The officer so appointed shall visit the office of the local inspector of weights and measures, and shall, among other things, inquire into the procedure observed in the verification and inspection of weights, measures, and weighing instruments within that jurisdiction; and, on the completion of the local inquiry, shall report to the Board of Trade and to the local authority on the condition and equipment of the office visited, and on the mode in which the law relating to weights and measures is being carried out within the jurisdiction of that authority.

(4.) Where the appointment is made on the application of a local authority, the costs incurred in relation to the inquiry, including the remuneration of any officer engaged in the inquiry, not exceeding three guineas a day, shall be paid by the local authority applying for or assenting to the inquiry (*s*), and the Board of Trade may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any local authority shall be a debt to the Crown from that authority.

(*s*) These costs will, it is presumed, be payable as expenses incurred by the local authority under the Act of 1878, viz., in the case of a county council, out of the county rate; see the Act of 1878, s. 51, and Sched. 4.

(5.) Where the appointment is made otherwise than on the application of a local authority, the costs incurred in relation to the inquiry, including the remuneration aforesaid, shall be paid out of moneys provided by Parliament.

Qualification of inspectors of weights and measures

11.—(1.) The Board of Trade shall provide for the holding of examinations for the purpose of ascertaining whether persons acting or appointed to act as inspectors of weights and measures possess sufficient practical knowledge for the proper performance of their duties as such, and for the grant of certificates to persons who satisfactorily pass such examinations.

(2.) In the case of persons who have been appointed inspectors before the commencement of this Act, the passing of an examination under this section shall be permissive, but not obligatory; but a person who, after the commencement of this Act, is for the first time appointed to be an inspector of weights and measures shall not act as such unless and until he has obtained such a certificate as aforesaid (*t*).

(3.) There shall be charged in respect of the examinations under this section such fees as the Board of Trade, with the concurrence of the Treasury, from time to time direct, and all such fees shall be applied in such manner and to such extent as the Treasury from time to time direct, in aid of money provided by Parliament for expenses of the Board of Trade under this Act, and if and as far as not so applied shall be paid into the exchequer.

Inspector not to be maker, seller, or adjuster of weights, measures, or weighing instruments.

12.—(1.) An inspector of weights and measures shall not, during the time he holds office, be a person deriving any profit from or employed in the making, adjusting, or selling of weights, measures, or measuring or weighing instruments:

(2.) Provided that in any district where, on the representation of the local authority, it appears to be desirable for an inspector of weights and measures to be allowed to adjust weights and measures, the Board of Trade may, if they think fit, authorize an inspector appointed by that local authority to act as an adjuster of weights and measures.

(3.) An inspector so authorized may for any such adjustment make such charges as the local authority approve, and shall account for and pay any money received by him in respect of such charges in such manner as the local authority direct.

Fees for verification and stamping by inspectors.

13.—(1.) An inspector of weights and measures may take in respect of the verification and stamping of weights, measures, and weighing instruments the fees specified in the first Schedule to this Act, and no others, and no discount shall be allowed, and such

(*t*) This provision does not prevent a person who has been appointed an inspector, but has not yet obtained a certificate from laying an information for a breach of bye-laws under this Act; for the Act contains no provision that only an inspector can lay such an information. *Crabtree* v. *Bulman*, 60 J. P. 489; 12 T. L. R. 469.

Sect. 13 (1). inspector shall at such times, not less often than once a quarter, as the local authority direct, account for and pay over to the local authority, or as they direct, all fees so taken.

(2.) If the Board of Trade represent to Her Majesty that it would be expedient to fix fees to be paid on the verification and stamping of weights, measures, or weighing instruments, in cases other than those specified in the said schedule, it shall be lawful for Her Majesty, by Order in Council, from time to time to direct such fees to be paid.

Publication of convictions.

14. Where a person is convicted before any court of any offence under the principal Act or this Act, the court may, if it thinks fit, cause the conviction to be published in such manner as it thinks desirable.

Application of 41 & 42 Vict. c. 49, s. 66 to gas standards.

15. The provisions of the principal Act and of this Act as to the verification and re-verification of local and working standards shall apply to the standards used by any local authority in testing meters under the Act of the Session held in the twenty-second and twenty-third years of the reign of Her present Majesty, chapter sixty-six, intituled "An Act for regulating measures used in sales of gas," and the Acts amending the same (*u*).

Powers to London County Council to exercise jurisdiction throughout the county.

16. Notwithstanding anything in section fifty-four of the principal Act, and any other provision in that or any other Act, the inspectors of weights and measures appointed by the London County Council shall alone within the whole of the county of London, exclusive of the city of London, have the powers and discharge the duties of inspectors of weights and measures appointed under the principal Act; provided that any inspector of weights and measures who, at the passing of this Act, though not an officer of the county council, holds office in any parish or place in the county of London, exclusive of the city of London, shall become an officer of that council, and if removed from such appointment by the London County Council he shall be entitled to be regarded as an existing officer under the Local Government Act, 1888, and to receive such compensation as existing officers whose offices are affected are under that Act entitled to receive (*x*).

51 & 52 Vict. c. 41.

Provision as to city of London.

17. Notwithstanding anything in section sixty-seven or sixty-eight of the principal Act, a person using weights or measures in the city of London shall not be required to have his weights or measures verified or stamped by more than one authority (*y*).

18. * * **19.** * * (*z*).

(*u*) As to the Sale of Gas Act, 1859 (22 & 23 Vict. c. 66), see the note to s. 3 (xiii) of the Local Government Act, 1888, *ante*, p. 12.

(*x*) This section practically repeals s. 54 of the Act of 1878 so far as the county of London is concerned; that section enabled local inspectors of weights and measures to be appointed by the same authority as formerly. As to compensation to existing officers under the Local Government Act, 1888, see s. 120 of that Act, and notes, *ante*, p. 195.

(*y*) Sections 67 and 68 contain savings as to the rights of the Founders Company and of the Corporation of London.

(*z*) Sections 18 and 19 relate to Ireland only.

PART II.—*Sale of Coal.*

Sect. 20 (1).

Coal to be sold by weight.

20.—(1.) All coal shall be sold by weight only, except where by the written consent of the purchaser it is sold by boat load or by waggons or tubs delivered from the colliery into the works of the purchaser.

(2.) If any person sells coal otherwise than is required by this section he shall be liable to a fine not exceeding five pounds for every such sale.

Weight ticket or note on delivery of coal over two hundred-weight.

21.—(1.) Where any quantity of coal exceeding two hundred-weight is delivered by means of any vehicle to a purchaser, the seller of the coal shall therewith deliver, or cause to be delivered, or to be sent by post or otherwise, to the purchaser or to his servant, before any part of the coal is unloaded, a ticket or note according to the form in the Third Schedule to this Act, or according to a form to the like effect (*a*).

(2.) If default is made in complying with the requirements of this section with respect to the delivery or sending of a ticket or note, or if the quantity of coal delivered is less than the quantity expressed in the ticket or note (*b*), the seller of the coal shall be liable to a fine not exceeding five pounds.

(3.) If any person attending on any such vehicle, having received any such ticket or note for delivery to the purchaser, refuses or neglects to deliver it as required by this section, or, on being requested so to do, to exhibit it to any inspector of weights and measures, or other officer appointed for the purpose by the local authority, he shall be liable to a fine not exceeding five pounds.

Tare weight of vehicle where coal sold in bulk.

22.—(1.) Where any quantity of coal exceeding two hundred-weight is conveyed for delivery on sale in a vehicle in bulk, the seller of the coal shall, unless the vehicle is provided by the purchaser, cause the weight of the vehicle, as well as of the coal contained therein, to be previously ascertained by a weighing instrument, stamped by the inspector of weights and measures, and being on or near to the place from which the coal is brought, and shall from

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(*a*) A truck load of coal was bought for delivery at the premises of the purchaser, and was delivered by means of three carts, each taking two journeys, and each carrying more than 2 cwt. of coal; no ticket or note under this section was delivered at the end of the first journey of any cart, but at the end of the second journey a ticket was delivered showing only the weight of the entire truckload, but not the weight delivered by any of the carts on either journey, nor the tare weight of any cart. *Held*, that the seller ought to be convicted under this section. *Stangoe* v. *Slatter*, 60 J. P. 342; 12 T. L. R. 335.

(*b*) When the ticket stated that the purchaser was to receive two tons of coal in twenty sacks, each containing 2 cwt., and some of the sacks contained less than 2 cwt., but the total amount delivered was not less than two tons, it was held that no offence was committed under this section. *Godfrey* v. *Radford*, 75 L. T. (N.S.) 224; 60 J. P. 615.

Sect. 22 (1). time to time cause the tare weight of the vehicle to be marked thereon in such manner as the local authority approve.

(2.) In any such case the seller of the coal shall insert or cause to be inserted in the ticket required by this Act to be given by him a statement of the correct weight of the vehicle, or of the vehicle and of the animal drawing it where both are weighed together with the load, as well as of the correct weight of the coal contained in the vehicle (*c*).

(3.) If any person fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five pounds.

Frauds by drivers of coal carts.

23. If the person in charge of any vehicle in which coal is being carried wilfully makes any false statement as to the tare weight of the vehicle, or wilfully does any act by which either the seller or the purchaser of the coal is defrauded, he shall be liable to a fine not exceeding five pounds.

Penalty on deficiency in weight of coal on small sales.

24. If any person on the sale of coal in any quantity not exceeding two hundredweight fraudulently delivers to the purchaser a less quantity of coal than is agreed to be sold, he shall be liable to a fine not exceeding five pounds.

Weighing instrument to be kept in place where coal sold by retail.

25.—(1.) Where coal is sold by retail for delivery at the place where it is kept for sale and there is not at or near such place any weighing instrument stamped by an inspector of weights and measures at which the coal can be weighed, the seller shall keep at that place a weighing instrument stamped as aforesaid, and shall, if so required by any purchaser, or by any inspector of weights and measures, or by any other officer appointed for the purpose by the local authority, weigh any coal before the sale or delivery thereof.

(2.) If any person fails to comply with the requirements of this section he shall be liable to a fine not exceeding for a first offence two pounds, and for any subsequent offence five pounds.

Erection and maintenance of weighing instruments.

26.—(1.) The local authority may erect and maintain fixed weighing instruments at convenient places for the purpose of weighing coal, and may provide, furnish, and maintain portable weighing instruments for the same purpose, and may appoint proper persons to keep and attend any such instruments.

(2.) If the keeper of any such fixed weighing instrument refuses, without reasonable excuse, to weigh or re-weigh any vehicle or coal, or so weighs any vehicle or coal as wilfully to defraud either the seller or the purchaser of coal, he shall be liable to a fine not exceeding five pounds.

Power to require weighment of coal or vehicle.

27.—(1.) Any seller or purchaser of coal, person in charge of a vehicle in which coal is carried, inspector of weights and measures,

(*c*) Where coal exceeding 2 cwt. is conveyed for delivery on sale in a vehicle not belonging to the purchaser, the correct weight to be inserted in the ticket is the weight as ascertained at the place from which the coal is brought and not the weight at the time of delivery. *Knowles* v. *Sinclair*, W. N. (1897) p. 176. See also *Stangoe* v. *Slatter*, *supra*.

or other officer appointed for the purpose by the local authority (*d*), may require that any coal or any vehicle used for the carriage of coal in bulk be weighed or re-weighed by any weighing instrument stamped by an inspector of weights and measures. Sect. 27 (1).

Provided as follows:

(a.) No seller of coal or person in charge of a vehicle in which coal is carried shall be required under this section to carry coal beyond such distance, not exceeding half a mile as may be prescribed in that behalf by the local authority:

(b.) Where any such coal or vehicle has at the instance of the purchaser been weighed or re-weighed in pursuance of this section, and found to be of the weight stated in that behalf by the seller of the coal or the person in charge of the vehicle, the purchaser shall be liable to the payment of all reasonable costs actually incurred of and incidental to the weighing or re-weighing.

(2.) If any person obstructs any weighing or re-weighing authorized by this section he shall be liable to a fine not exceeding five pounds.

Power to make bye-laws with respect to the sale of coal.

28.—(1.) Any local authority may from time to time make, revoke, and alter byelaws (*e*),

(a) regulating for the purposes of this Act the sale of coal in quantities not exceeding two hundredweight; and,

(b) requiring either generally or in specified classes of cases, a weighing instrument, of a form approved by the local authority, to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser; and

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(*d*) "The Act contemplated the selection of special persons for this purpose, and not the general delegation of the power to all constables," *per* Lord RUSSELL of KILLOWEN, C.J. *Alty* v. *Farrell*, *infra*.

(*e*) A bye-law under this section, that "every coal dealer shall provide, and every person employed by him who shall convey or carry coal for sale or delivery to a purchaser from or out of any vehicle, shall carry therewith a correct and stamped weighing machine of the form approved by the county council," was held to be warranted by clause (b) of this section, and valid; *Kent County Council* v. *Humphrey*, [1895] 1 Q. B. 903; 64 L. J. M. C. 190: 72 L. T. (N.S.) 563; 43 W. R. 506; 59 J. P. 520. See also *Martin* v. *Clarke*, 62 L. J. M. C. 178; 9 T. L. R. 656.

But where a bye-law, after containing a provision to the same effect as in the above cases, went on to require that the person in charge of a vehicle carrying coal for sale in quantities not exceeding 2 cwt. "shall re-weigh the coal upon being requested to do so by any purchaser, or by any one on behalf of the purchaser, or by an inspector of weights and measures, or by any constable," the latter part of the bye-law was held to be unreasonable, on the grounds that it contained no limitation that the request to re-weigh must be reasonable, and that it made it possible that the man might have to weigh the coal again and again on different requests, and that the Act did not intend that a power to require re-weighing should be conferred on all the constables of a borough. And WRIGHT, J., doubted whether the Act authorized a bye-law requiring the person in charge of the vehicle to re-weigh the coal himself. *Alty* v. *Farrell*, [1896] 1 Q. B. 636; 65 L. J. M. C. 115; 74 L. T. (N.S.) 492; 60 J. P. 373.

Sect. 28 (1).

(c) prescribing the distance beyond which coal is not to be required to be carried for the purpose of being weighed or re-weighed in pursuance of this Act; and

(d) fixing the fees to be paid for the use of any weighing instrument maintained by the local authority;

and may by such bye-laws impose fines, recoverable summarily, and not exceeding in each case five pounds, for the breach of any such byelaw.

(2.) Every bye-law made under this section shall, before being brought into operation, be approved by the Board of Trade and be published in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and a copy of every such bye-law shall be sent by the local authority to the Board of Trade.

Power to weigh coal in shop or vehicle.

29.—(1.) Any inspector of weights and measures or officer appointed for the purpose by the local authority may, at all reasonable times enter any building or part of a building or other place in which coal is sold or kept or exposed for sale, and may stop any vehicle carrying coal for sale or for delivery to a purchaser, and may test any weights and weighing instruments found in any such place or vehicle, and may weigh any load, sack, or other less quantity of coal, found in any such place or vehicle, or which is in course of delivery to any purchaser.

(2.) If it appears to a court of summary jurisdiction that any load, sack, or less quantity so weighed is of less weight than that represented by the seller, the person selling or keeping or exposing the coal for sale, or the person in charge of the vehicle, as the case may be, shall be liable to a fine not exceeding five pounds (*f*).

(3.) Any person who obstructs or hinders any inspector acting under this section shall be liable to a fine not exceeding five, or, in the case of a second or subsequent offence ten, pounds.

Power to make local exemptions.

30. Her Majesty the Queen may from time to time, on the application of the local authority for any area, and on being satisfied

(*f*) In order to convict the seller of an offence under this section, there must be an actual representation by him as to the weight of the coal sold, and a representation made to an inspector by a servant in charge of a vehicle carrying coal for delivery to a purchaser is not of itself the representation of the master so as to make him liable. *Roberts* v. *Woodward*, 25 Q. B. D. 412; 59 L. J. M. C. 129; 63 L. T. (N.S.) 200; 38 W. R. 770; 55 J. P. 116; 17 Cox C. C. 139.

But where a seller sent out coals in sacks, to each of which was attached a metal label bearing the inscription "½ cwt." and the inspector weighed a sack, when in course of delivery by the seller's carman, and found that it contained 7 lbs. less than half a cwt., it was held that the label constituted a representation by the seller, and that he was properly convicted under this section. *Franklin* v. *Godfrey*, 63 L. J. M. C. 239; 43 W. R. 46. And where the delivery ticket, made out in the seller's office and delivered to the inspector by a carman who was not the seller's servant, but the servant of a contractor employed by the seller to deliver the coals, represented coals sold to be of a certain weight, and they were found on weighing by the inspector to be of a less weight, the conviction of the seller under this section was upheld. *Baker* v. *Herd*, 58 J. P. 413; 10 T. L. R. 181.

that the provisions made by or under any local Act in force at the commencement of this Act, with respect to the sale of coal in that area are more stringent than the corresponding provisions of this Act, by Order in Council exempt that area from the provisions of this Part of this Act to such extent, and under such conditions, as may appear to Her Majesty in Council expedient. Sect. 30.

31. This Part of this Act, except the provision requiring coal to be sold by weight only, shall not extend to Scotland. Extent.

PART III.

Bread.

32. Nothing in the enactments referred to in the Fourth Schedule to this Act shall render any baker or seller of bread, or the journeyman, servant, or other person employed by such baker or seller of bread, liable to any forfeiture or penalty for refusing to weigh in the presence of the purchaser any bread conveyed or carried out in any cart or other carriage, unless he is requested so to do by or on behalf of the purchaser (*g*). Explanation of law as to bakers.

PART IV.

Supplemental.

33.—(1.) No proceeding or conviction for any offence punishable under this Act shall affect any civil remedy to which any person aggrieved by the offence may be entitled. Saving for liabilities otherwise than under Act.

(2.) This Act shall not exempt any person from any indictment or other proceeding for an offence which is punishable at common law or under some Act of Parliament other than this Act, so that no person be punished twice for the same offence.

(3.) Where proceedings are taken before any court against any person in respect of any offence punishable under this Act, and the offence is also punishable at common law or under some Act of Parliament other than this Act, the court may direct that, instead of those proceedings being continued, proceedings shall be taken against that person at common law or under some Act of Parliament other than this Act.

(*g*) The enactments referred to are the 3 Geo. 4, c. cvi., s. 9 (relating to the city of London), and 6 & 7 Will. 4, c. 37, s. 7 (relating to areas outside the city). These enactments require bakers and their servants selling bread from a cart to carry proper scales for weighing the bread so sold, and impose a penalty on any such person who refuses to weigh the bread so sold in the presence of the purchaser. The text only applies to such parts of those sections as relate to a refusal to weigh ; there is to be no penalty unless there is a refusal after the purchaser, or someone on his behalf, has requested that the bread shall be weighed. See *Copeland* v. *Walker*, 65 L. T. (N.S.) 262 ; 55 J. P. 809 ; 17 Cox C. C. 331. The enactments in the two statutes as to the sale of bread by weight (including the sections above referred to) apply to all bread except bread usually sold under the denomination of "French or fancy bread or rolls ;" as to what falls under this denomination, see *The V. V. Bread Co.* v. *Stubbs*, 74 L. T. (N.S.) 704 ; 60 J. P. 424, and the cases there cited.

Sect. 34.

Construction of Act.

34. This Act and the principal Act shall be construed together as one Act.

Definitions.

35. In this Act, unless the context otherwise requires,—

"Weighing instrument" includes scales, with the weights belonging thereto, scale-beams, balances, spring-balances, steelyards, weighing machines, and other instruments for weighing:

"Measuring instrument" includes any instrument for the measurement of length, capacity, volume, temperature, pressure, or gravity, or for the measurement and determination of electrical quantities:

"Vehicle" means any carriage, cart, waggon, truck, barrow, or other means of carrying coal by land, in whatever manner the same may be drawn or propelled, but does not include a railway truck or waggon:

"Inspector" means an inspector under the principal Act:

Other expressions have the same meaning as in the principal Act (*h*): Provided that the expression "local authority" shall, in its application to England, be construed subject to the provisions of the Local Government Act, 1888 (*i*), and the expression "weighing machine" in the principal Act shall include any weighing instrument as defined by this Act.

51 & 52 Vict. c. 41.

Repeal.

36.—(1.) The enactments specified in the Fifth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

(2.) The repeal of any enactment by this Act shall not affect—

(a) the past operation of any enactment so repealed, or anything duly done or suffered under any enactment so repealed; or

(b) any right or liability acquired or incurred under any enactment so repealed: or

(c) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(d) any power, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such power, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.

Commencement.

37. This Act shall come into operation on the first day of January one thousand eight hundred and ninety, which date is in this Act referred to as the commencement of this Act:

Provided as follows:

(a.) At any time after the passing of this Act any appointment, bye-law, or regulation may be made, and any other thing

(*h*) See the definitions in s. 70 of the Act of 1878.

(*i*) See the Local Government Act, 1888, s. 3 (xiii.), *ante*, p. 12.

may be done, which appears to a local authority to be necessary or proper for the purpose of bringing this Act into operation at the commencement thereof; Sect. 37.

* * * * * * (*k*)

39. This Act may be cited as the Weights and Measures Act, 1889; and the principal Act and this Act may be cited together as the Weights and Measures Acts, 1878 and 1889 (*l*). Short titles.

SCHEDULES.

FIRST SCHEDULE. Section 13.

Fees to be taken on the verification and stamping of Weights, Measures, and Weighing Instruments by Inspectors of Local Authorities.

Weights.

	s.	d.
Avoirdupois:		
Each weight of 100 lb. (cental)	0	4
„ „ 56 lb. and 28 lb.	0	3
„ „ 14 lb. and 7 lb.	0	2
„ „ from 4 lb. to 1 lb., inclusive	0	1
„ „ „ 8 oz. to ½ dram, inclusive	0	0½
„ „ „ 4,000 grains to $\frac{1}{100}$th of a grain, inclusive	0	0½
„ „ „ 240 to 24 grains, inclusive, commonly called pennyweights	0	0½
Troy:		
Each weight from 500 oz. to 100 oz., inclusive	0	4
„ „ „ 50 oz. to 10 oz., inclusive	0	2
„ „ „ 5 oz. to $\frac{1}{1000}$th of an oz., inclusive	0	1
Apothecaries:		
Each weight from 10 oz. to 1 oz. inclusive	0	2
„ „ „ 4 drachms to ½ grain, inclusive	0	1

Measures.

Length:		
Each measure from 100 feet to 7 feet inclusive	0	3
„ „ „ 6 feet to 4 feet inclusive	0	2
„ „ of a yard, 2 feet, foot and inch respectively, including their sub-divisions	0	1
Measures from 0·500 to 0·001 inch, in the form of wire-gauge plates:		
For each notch, or for each internal gauge or separate size, from half an inch to $\frac{1}{1000}$th of an inch	0	0¼
Capacity:		
Dry and liquid measures:		
Each measure of 4 bushels (32 gallons) and 1 bushel (8 gallons)	0	6
„ „ from 5 gallons to 2 gallons (peck), inclusive	0	3
„ „ „ 1 gallon to a ¼ gill, inclusive	0	1
Apothecaries:		
Each subdivided measure containing not more than twelve sub-divisions	0	1
„ „ „ containing more than twelve sub-divisions but not more than fifteen	0	1¼
„ „ „ containing more than fifteen sub-divisions but not more than eighteen	0	1½

(*k*) Clause (b) of s. 37 and s. 38 relate exclusively to Ireland.

(*l*) The Act of 1878, this Act, and the Acts of 1892 and 1893 (see note (*m*) *ante*, p. 409), are now comprised in the collective title, "The Weights and Measures Acts, 1878 to 1893;" Short Titles Act, 1896 (59 & 60 Vict. c. 14).

Schedule 1. Apothecaries—*continued.*

	s.	d.
Each subdivided measure containing more than eighteen subdivisions but not more than twenty-one	0	1¾
„ „ „ containing more than twenty-one subdivisions but not more than twenty-four	0	2
„ „ „ containing more than twenty-four subdivisions but not more than thirty	0	2½
„ „ „ containing more than thirty subdivisions but not more than thirty-six	0	3
„ „ „ containing more than thirty-six subdivisions but not more than forty-two	0	3½
„ „ „ containing more than forty-two subdivisions but not more than fifty	0	4
„ „ „ containing more than fifty subdivisions but not more than one hundred	0	6
„ „ „ containing more than one hundred subdivisions but not more than one hundred and fifty	0	9
„ „ „ containing more than one hundred and fifty	1	0
Each separate measure from 40 fluid oz. to 10 fluid oz. inclusive	0	2
„ „ „ „ 10 fluid oz.	0	0½

Weighing Instruments.

For 10 tons and above	10	0
For under 10 tons and above 1 ton	5	0
For 1 ton and above 5 cwt.	2	0
For 5 cwt. and above 1 cwt.	1	6
For 1 cwt. and above 56 lbs.	1	0
exclusive of cost of cartage and lifting of standards in each of the above cases.		
For 56 lb. and above 14 lb.	0	6
For 14 lbs. and above 1 lb.	0	3
For 1 lb. or under	0	2

Section 19. SECOND SCHEDULE (*m*).

Section 21. THIRD SCHEDULE.

Weight Ticket or Consignment Note on delivery of Coal over Two Hundredweight.

Mr. *A.B.* [*here insert the name of the buyer*].

Take notice that you are to receive herewith tons cwt. lbs. of coal.

[*When sold in sacks, add*]

in sacks, each containing cwt.

[*When sold in bulk, add*]

	tons.	cwts.	lbs
Weight of coal and vehicle			
Tare weight of vehicle			
Net weight of coal herewith delivered to purchaser			

C.D. [*here insert the name of the seller*].

E.F. [*here insert the name of the person in charge of the vehicle*].

(*m*) This Schedule relates to Ireland only.

Where coal is delivered by means of a vehicle the seller must deliver or send by post or otherwise to the purchaser or his servant, before any part of the coal is unloaded, a ticket or note in this form. **Schedule 3.**

Any seller of coal who delivers a less quantity than is stated in this ticket or note is liable to a fine.

Any person attending on a vehicle used for the delivery of coal who, having received a ticket or note for delivery to the purchaser, refuses or neglects to deliver it to the purchaser or his servant, is liable to a fine.

FOURTH SCHEDULE.

Section 32.

Session and Chapter.	Title.	Enactments referred to.
3 Geo. 4, c. cvi. - - -	An Act to repeal the Acts now in force relating to bread to be sold in the city of London and the liberties thereof, and within the weekly bills of mortality, and ten miles of the Royal Exchange; and to provide other regulations for the making and sale of bread, and preventing the adulteration of meal, flour, and bread, within the limits aforesaid.	Section nine.
6 & 7 Will. 4, c. 37 - -	An Act to repeal the several Acts now in force relating to bread to be sold out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange; and to provide other regulations for the making and sale of bread, and for preventing the adulteration of meal, flour, and bread, beyond the limits aforesaid.	Section seven.

FIFTH SCHEDULE.

Section 36.

ENACTMENTS REPEALED.

Session and Chapter.	Short title.	Extent of Repeal.
41 & 42 Vict. c. 49. -	The Weights and Measures Act, 1878.	Section sixteen. Section forty three, from "A maker or seller of weights" to "measures under this Act." Section forty-six. Section forty-seven. Section eighty-six, so far as it re-enacts section nine of the Weights and Measures Act, 1835. The Fifth Schedule.

WELSH INTERMEDIATE EDUCATION ACT, 1889.

(52 & 53 VICT. CAP. 40) (*n*).

An Act to promote Intermediate Education in Wales.

[12th August, 1889.]

* * * * *

Preliminary.

1. This Act may be cited for all purposes as the Welsh Intermediate Education Act, 1889, and shall, so far as is consistent with Short title and construction.

(*n*) This Act constitutes a "joint education committee" for every county in Wales and for Monmouthshire for the purpose of submitting to the Charity Commissioners a scheme or proposal for a scheme for the intermediate and

Sect. 1.

the tenour thereof, be construed as one with the Endowed Schools Acts (*o*), and may be cited together with those Acts, as the Endowed Schools Acts, 1869 to 1889. This Act shall come into operation on the first day of November next after the passing thereof, which day is in this Act referred to as the commencement of this Act.

Purpose of Act.

2. The purpose of this Act is to make further provision for the intermediate and technical education of the inhabitants of Wales and the county of Monmouth.

Schemes for Intermediate Education.

Schemes by joint education committee.

3.—(1.) It shall be the duty of the joint education committee as hereinafter mentioned (*p*) of every county in Wales and of the county of Monmouth to submit to the Charity Commissioners a scheme or schemes for the intermediate and technical education of the inhabitants of their county, either alone or in conjunction with the inhabitants of any adjoining county or counties, specifying in each scheme the educational endowments within their county which in their opinion ought to be used for the purpose of such scheme.

(2.) A county council may recommend their committee to insert in such scheme a provision for a payment out of the county rate to an amount not exceeding that in this Act mentioned (*q*), of the expenses of carrying into effect the scheme, or any particular part thereof, and such provision may accordingly, if it is thought fit, be inserted in the scheme.

(3.) Such scheme, if the Commissioners (after such examination or inquiry as mentioned in section thirty-two of the Endowed Schools Act, 1869 (*r*)) approve it, either without modification, or with

32 & 33 Vict, c. 56.

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technical education (as defined by s. 17, *infra*) of the inhabitants of the county. The county council appoints some of the members of the joint committee and exercises a certain control over their proceedings. The powers of a joint education committee are temporary (see s. 11, *infra*), but are now in force until December 31st, 1898, by virtue of the Expiring Laws Continuance Act, 1897 (60 & 61 Vict. c. 54).

(*o*) The Endowed Schools Acts comprise the 32 & 33 Vict. c. 56 (1869), the 36 & 37 Vict. c. 87 (1873), the 37 & 38 Vict. c. 87 (1874), and this Act.

(*p*) The constitution of the joint education committee is provided for by s. 5, *infra*.

(*q*) The addition to the county rate for contributions under this Act is not to exceed in any year one halfpenny in the pound on the rateable value of the property as ascertained for the purpose of levying county contributions, s. 8 (3), *infra*.

(*r*) Section 32 of the Endowed Schools Act, 1869, empowered the Charity Commissioners, after such examination or public inquiry as they think necessary, to prepare drafts or schemes for the purposes of that Act subject to certain conditions, one of which was that any governing body of any such endowment might within a certain period after the commencement of the Act, and upon giving certain notices to the Commissioners, prepare and submit to the Commissioners in writing a scheme relating to such endowment, and the Commissioners shall consider such scheme before they themselves prepare any

such modifications as may be assented to by the joint education committee, shall be adopted and proceeded on by the Commissioners in the same manner as if it were a draft scheme originally prepared by themselves.

(4.) If the scheme is not so adopted by the Commissioners, it shall be deemed to be a scheme prepared and submitted by a governing body to the Commissioners within the meaning of section thirty-two of the Endowed Schools Act, 1869, and shall be dealt with accordingly (*r*).

(5.) Where a county council recommend a payment out of the county rate a scheme may be made in pursuance of this Act, although there is no other endowment.

(6.) The Charity Commissioners may, if they think fit, accept a joint scheme from two or more joint education committees.

(7.) A joint education committee may, instead of submitting a scheme, submit to the Charity Commissioners proposals for a scheme, and such proposals may include, if so recommended by the county council, a payment out of the county rate; and the Commissioners shall prepare a scheme for carrying into effect such proposals, either with or without modifications, but any modification to which the joint education committee do not assent shall be struck out of the scheme, and the scheme as so prepared, with the omission of any modification to which the joint education committee do not assent, shall be deemed for the purposes of this section to be a scheme submitted by a joint education committee to the Charity Commissioners, and the Commissioners shall proceed accordingly.

Restrictions on powers of joint education committee.

4.—(1.) A joint education committee shall not without the assent of the county council direct by their scheme any contribution to be made out of the county rate exceeding the amount recommended by the county council.

(2.) Where any part of the expenses of the establishment or maintenance of a school or of scholarships attached thereto is to be defrayed out of the county rate a scheme relating to such school shall provide that the county council shall be adequately represented on the governing body of such school.

(3.) Where a scheme under this Act does not relate to a school maintained out of the endowment, or forming part of the foundation, of any cathedral or collegiate church, or where a scheme under this Act does not relate to any other educational endowment which by section nineteen of the Endowed Schools Act, 1869, is excepted from the foregoing provisions of that Act therein mentioned, such scheme shall, in addition to the provisions of section fifteen of

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draft of a scheme relating to the same endowment; and any scheme so prepared by the governing body and submitted to the commissioners shall, if approved by them, be adopted and proceeded with by them in the same manner as if it were a draft scheme originally prepared by themselves.

Sect. 4 (3). the said Act, provide that no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught to a scholar attending as a day scholar at the school established or regulated by the scheme, and that the times for prayer or religious worship or for any lesson or series of lessons on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of a day scholar therefrom in accordance with the said section fifteen (*s*).

(4.) Where any power of appeal to the Queen in Council, or power to present a petition praying that a scheme may be laid before Parliament, is given by the Endowed Schools Acts to any persons or body of persons in relation to any endowment, a like power may be exercised by a county council required by the scheme to contribute a sum out of the county rate, or by a joint education committee in relation to any matter which has been introduced into the scheme against the wishes of the county council or committee, as the case may be, as expressed in objections sent in writing to the Charity Commissioners before the scheme was submitted by those Commissioners for the approval of the Education Department (*t*).

(*s*) Section 15 of the Act of 1869 provides for the exemption of day scholars from attendance at religious worship and lessons on religious subjects in certain cases. Section 16 deals with similar exemptions in the case of boarders. Sections 17 and 18 prevent religious tests being required in the case of the governing body and masters. Section 19 provides that a scheme relating to—

(1) any school which is maintained out of the endowment of any cathedral or collegiate church, or forms part of the foundation of any cathedral or collegiate church ; or

(2) any educational endowment, the scholars educated by which are, in the opinion of the Commissioners (subject to appeal to Her Majesty in Council as mentioned in this Act) required by the express terms of the original instruments of foundation or of the statutes or regulations made by the founder or under his authority, in his lifetime or within fifty years after his death (which terms have been observed down to the commencement of this Act) to learn or to be instructed according to the doctrines or formularies of any particular church, sect, or denomination,

is excepted from the foregoing provisions respecting religious instruction and attendance at religious worship (other than the provisions for the exemption of day scholars from attending prayer or religious worship, or lessons on a religious subject, when such exemption has been claimed on their behalf), and respecting the qualification of the governing body and masters (unless the governing body, constituted, as it would have been if no scheme under this Act had been made, assents to such scheme) ; and a scheme relating to any such school or endowment shall not without the consent of the governing body thereof make any provision respecting the religious instruction or attendance at religious worship of the scholars (except for securing such exemption as aforesaid) or respecting the religious opinions of the governing body or masters.

The above exceptions are extended by s. 7 of the Endowed Schools Act, 1873.

(*t*) As to appeals to the Queen in Council and laying schemes before Parliament, see ss. 39 *et seq* of the Act of 1869 and ss. 14 and 15 of the Act of 1873. As to the approval of the Education Department, see ss. 37 and 38 of the Act of 1869 and s. 13 of the Act of 1873.

Constitution and Powers of Joint Education Committee. Sect. 5.

Establishment of joint education committee.

5. For the purposes of this Act there shall be appointed in every county in Wales and in the county of Monmouth a joint education committee of the county council of such county consisting of three persons nominated by the county council, and two persons, being persons well acquainted with the conditions of Wales and the wants of the people, preference being given to residents within the county for which such joint committee is to be appointed, nominated by the Lord President of Her Majesty's Privy Council. Any vacancy in the joint education committee among the persons appointed by the county council may be filled up by the county council, and any vacancy among the persons nominated by the Lord President may be filled up by the Lord President.

Transaction of business by and proceedings of joint education committee.

6.—(1.) Sub-sections one and two of section eighty-two of the Local Government Act, 1888 (*u*), respecting the proceedings of committees of county councils, shall apply to proceedings of the joint education committee of a county council under this Act, but the acts and proceedings of the committee shall not be required to be submitted to the county council for their approval.

(2.) The county council shall make proper provision for enabling the committee to transact its business, and the clerk of the county council shall act as the clerk of the joint education committee. Any act of the committee may be signified under the hands of any three members thereof or under the hand of the clerk.

(3.) Any of the assistant commissioners of the Charity Commissioners shall be at liberty to attend any meeting of a joint education committee, and to take part in the proceedings, but shall not have a right to vote.

Contributions from county rate.

7.—(1.) Where a county council has recommended that any scholarship should be paid out of the county rate a scheme under this Act may contain provisions to that effect.

(2.) Where a county council has recommended that any annual contribution should be made out of the county rate a scheme under this Act may direct the contribution so recommended or any less contribution to be made accordingly, and shall specify the persons to whom the contribution so directed to be made is from time to time to be paid.

(3.) The recommendation of a county council in respect of a contribution out of the county rate, and a scheme giving effect to such recommendation, may provide that such contribution shall be either a fixed annual sum, or an annual sum not exceeding a certain amount, such amount to be determined annually in manner specified in the scheme.

(4.) The annual contribution to be paid to any school out of the county rate in pursuance of any scheme shall not exceed the amount

(*u*) *Ante*, p. 157.

Sect. 7 (4). stated in such scheme, but may be reduced by an amending scheme made on the application of the county council or of the governing body of such school.

Finance.

Expenses of county council.

8.—(1.) Where a scheme under this Act providing for a contribution out of a county rate comes into operation, the amount from time to time payable out of the county rate in pursuance of such scheme shall be paid by the county council out of the county fund.

(2.) That amount and any expenses otherwise incurred by a county council in pursuance of this Act shall be paid as general expenses of the county council (*x*).

(3.) The addition made to the county rate in any county for the purpose of defraying contributions for intermediate and technical education under this Act shall not in any year exceed one halfpenny in the pound, on the aggregate amount of the rateable value of the property in the county, as ascertained for the purpose of the levy of the county contributions.

(4.) Every increase of rate levied under this section shall, in all precepts for the levy thereof, be described as a separate item of rate, and when collected from the individual ratepayers shall be specified as a separate item of rate.

Contribution from Treasury.

9.—(1.) The Commissioners of Her Majesty's Treasury shall annually out of moneys provided by Parliament pay in aid of each school aided by the county and subject to a scheme made under this Act such sums as hereinafter mentioned.

(2.) The sums to be so paid shall depend on the efficiency of the schools aided by the county, as ascertained by such annual inspection and report as may be required by the regulations from time to time made by the Treasury for the purposes of this section, and shall be of such amounts as may be fixed by those regulations, and shall be paid in manner provided by those regulations.

(3.) The aggregate amount of the sums paid by the Commissioners of Her Majesty's Treasury in any year in respect of the schools in any county shall not exceed the amount payable in that year in pursuance of this Act out of the county rate.

(4.) The Treasury may from time to time make, and, when made, vary and revoke, regulations for the purposes of this section.

Power to Public Works Loan Commissioners to lend.

10. The purposes for which the governing body of a school may be authorized in pursuance of this Act to borrow money shall be purposes for which the Public Works Loan Commissioners may lend to such governing body.

(*x*) As to general expenses of a county council, see the Local Government Act, 1888, s. 68, *ante*, p. 130. A county council may also contribute for the purposes of this Act any sum received by them in respect of the residue of the English share of the local taxation (customs and excise) duties under the 53 & 54 Vict. c. 60, s. 1, *post*.

Duration of powers of joint education committee, and suspension of powers of Charity Commissioners.

11. The powers conferred by this Act on a joint education committee shall not, unless Parliament otherwise directs, be exercised by the committee after the expiration of three years from the date of the commencement of this Act (*y*) and, during the continuance of the powers of the committee under this Act, all powers which otherwise might have been exercised by the Charity Commissioners of making, establishing, or submitting (independently of any scheme submitted by the joint education committee) a scheme for the administration of any educational endowments within the county of such committee, shall, except with the consent of the Education Department, be suspended, and not be exercised by them in relation to such endowments. Nothing in this Act shall prevent any proceedings under the Endowed Schools Acts in relation to any scheme of which a draft has been prepared, published, and circulated before the commencement of this Act, in pursuance of sections thirty-two and thirty-three of the Endowed Schools Act, 1869 (*z*), and such scheme may be proceeded with, submitted for approval, and come into operation as if this Act had not passed.

Description of endowments applicable to purpose of Act.

12.—(1.) An educational endowment within the county of a joint education committee means any educational endowment which is applied in the county or is appropriated for the benefit of the natives or inhabitants of the county, or of some of such natives or inhabitants, or their children or where the benefits of such endowment are divisible between two counties or between the counties in Wales and the county of Monmouth, or any of them, and any place outside of Wales and the county of Monmouth, then means so much of the endowment as the Charity Commissioners may determine to be applicable for the benefit of the county of the joint education committee.

(2.) Any school or endowment of a school to which section seventy-five of the Elementary Education Act, 1870, applies and any endowed school to which section three of the Endowed Schools Act, 1873, applies, shall, if the school is in the county of a joint education committee under this Act, be for the purposes of the Endowed Schools Acts and this Act an educational endowment and endowed school within the county of such committee (*a*).

33 & 34 Vict. c. 75.
36 & 37 Vict. c. 87.

(*y*) See note (*n*), *ante*, p. 423.

(*z*) As to s. 32, see note (*o*), *ante*, p. 424. Section 33 provides for the printing and publication of draft schemes by the Charity Commissioners.

(*a*) The governing bodies of schools and endowments excepted from the Act of 1869 as having been in receipt of an annual Parliamentary grant (see s. 8 of that Act) were by s. 75 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), empowered to submit schemes to the Education Department, and effect is to be given to such a scheme when approved by that Department as if it had been a scheme under the Act of 1869. A similar provision is made by s. 3 of the Endowed Schools Act, 1873, as to elementary schools, the gross

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Construction of Act in relation to endowments applicable to purposes thereof.

13. For the purposes of any scheme under this Act every notice relating to the scheme shall be sent to the joint education committee concerned therein in like manner as if they were a governing body, and such committee shall, during the duration of their powers under this Act, have the same power of applying to the Charity Commissioners with respect to any educational endowment within their county as if they were the governing body of that endowment. Nothing in this Act shall authorize the making of any scheme interfering with—

(1.) Any endowment given either by present gift made subsequently to the passing of the Endowed Schools Act, 1869, or by the will of a testator who died subsequently to the passing of the said Act, unless the founder or governing body of such endowment assents to the scheme.

In the case of an endowment or part of an endowment given either by present gift made subsequently to the passing of the Endowed Schools Act, 1869, or by the will of a testator who died subsequently to the passing of the said Act, sections twenty-five and twenty-six of the said Act shall for the purposes of a scheme under this Act, and subject to the provisions of this Act, apply in like manner as if the same and any older endowment or part of an endowment were respectively in the said sections substituted for an endowment or part of an endowment originally given to charitable uses less or more than fifty years before the commencement of the said Act (*b*).

Exemption of schemes from certain provisions of Endowed Schools Acts.

14. Nothing in the Endowed Schools Acts which is inconsistent with any of the provisions of this Act shall apply in the case of any scheme under this Act, but subject to this enactment the powers conferred by this Act shall be in addition to, and not in derogation of, the powers under the said Act.

Report by Charity Commissioners.

15. The Charity Commissioners shall in every year cause to be laid before both Houses of Parliament a report of the proceedings under this Act during the preceding year.

Application of Act to counties and county boroughs. 51 & 52 Vict. c. 41.

16.—(1.) In this Act the expression "county" means an administrative county as defined in the Local Government Act, 1888 (*c*), and includes a county borough within the meaning of that Act, and the expression "county council" includes the council of a county borough.

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average annual income of the aggregate educational endowments of which during the three years before September 1st, 1873, did not exceed one hundred pounds.

(*b*) Sections 25 and 26 of the Act of 1869 relate to the application of that Act to cases where old and new endowments have become mixed. The sections must be referred to, to explain the provision in the text.

(*c*) "Administrative county" means the area for which a county council is elected in pursuance of the Local Government Act, 1888, and see the definition in s. 100 of that Act, *ante*, p. 172.

(2.) Any sums payable by the council of a county borough in pursuance of this Act shall be paid out of the borough fund or borough rate. Sect. 16 (2).

General definitions.

17. In this Act unless there is something in the context inconsistent therewith—

The expression "intermediate education" means a course of education which does not consist chiefly of elementary instruction in reading, writing, and arithmetic, but which includes instruction in Latin, Greek, the Welsh and English language and literature, modern languages, mathematics, natural and applied science, or in some of such studies, and generally in the higher branches of knowledge, but nothing in this Act shall prevent the establishment of scholarships in higher or other elementary schools;

The expression "technical education" includes instruction in—

(i.) Any of the branches of science and art with respect to which grants are for the time being made by the Department of Science and Art;

(ii.) The use of tools, and modelling in clay, wood, or other material;

(iii.) Commercial arthmetic, commercial geography, book-keeping and shorthand;

(iv.) Any other subject applicable to the purposes of agriculture, industries, trade, or commercial life and practice, which may be specified in a scheme, or proposals for a scheme, of a joint education committee, as a form of instruction suited to the needs of the district;

but it shall not include teaching the practice of any trade or industry or employment.

The expression "Endowed Schools Acts" means the Endowed Schools Acts, 1869, 1873, and 1874; 32 & 33 Vict. c. 56.

The expression "Education Department" means the Lords of the Committee of Her Majesty's Privy Council on Education; 36 & 37 Vict. c. 87.

The expression "Charity Commissioners" means the Charity Commissioners for England and Wales; 37 & 38 Vict. c. 87.

The expression "scholarship" includes exhibition or other educational emolument;

The expression "parent" includes guardian and every person who is liable to maintain or has the actual custody of a child;

The expression "scheme under this Act" means a scheme under the Endowed Schools Act as amended by this Act.

PUBLIC BODIES CORRUPT PRACTICES ACT, 1889.

(52 & 53 Vict. Cap. 69.)

An Act for the more effectual Prevention and Punishment of Bribery and Corruption of and by Members, Officers, or Servants of Corporations, Councils, Boards, Commissions, or other Public Bodies. [30th August, 1889.]

Whereas it is expedient more effectually to provide for the prevention and punishment of bribery and corruption of and by members, officers, or servants of corporations, councils, boards, commissions, and other public bodies:

* * * * *

Corruption in office a misdemeanor.

1.—(1.) Every person who shall by himself, or by, or in conjunction with any other person, corruptly solicit or receive, or agree to receive (*d*), for himself, or for any other person, any gift, loan, fee, reward, or advantage (*e*) whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined (*e*), doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanor (*f*).

(2.) Every person (*g*) who shall by himself, or by, or in conjunction with any other person, corruptly give, promise, or offer any gift, loan, fee, reward, or advantage (*h*) whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for, or otherwise on account of any member, officer, or servant of any public body as in this Act defined (*h*), doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanor (*i*).

Penalty for offences.

2. Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted (*k*)—

(*d*) This sub-section applies to the person bribed or corrupted. The next sub-section deals with the person bribing. It is not necessary on an indictment for an offence under this sub-section to prove that the accused at the time of the commission of the alleged offence was himself a member, officer, or servant of a public body as defined by this Act, the alleged offence being an attempt to obtain a sum of money for abstaining, or inducing other persons to abstain, from giving evidence on an application to the London County Council for a music and dancing licence. *R.* v. *Edwards*, 59 J. P. 88.

(*e*) For the definition of "advantage," "public body," etc., see s. 7, *infra*.

(*f*) This misdemeanor will be an offence which may be tried on indictment at quarter sessions (s. 6). The penalty is prescribed by s. 2.

(*g*) The word "person" includes a body of persons, such as a firm or joint stock company. See s. 7.

(*h*) See the definition of "advantage," "public body," etc., in s. 7, *infra*.

(*i*) See note (*f*) to the preceding sub-section.

(*k*) The court will be either the court of quarter sessions (see s. 6), or the assizes, or Central Criminal Court. The offence is not punishable summarily.

(a.) Be liable to be imprisoned for any period not exceeding two years, with or without hard labour, or to pay a fine not exceeding five hundred pounds, or to both such imprisonment and such fine; and

(b.) In addition, be liable to be ordered to pay to such body (*l*), and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof; and

(c.) Be liable to be adjudged incapable of being elected or appointed to any public office (*m*) for seven years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction; and

(d.) In the event of a second conviction for a like offence, he shall, in addition to the foregoing penalties, be liable to be adjudged to be for ever incapable of holding any public office (*m*), and to be incapable for seven years of being registered as an elector, or voting at an election either of members to serve in Parliament or of members of any public body, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting (*n*); and

(e.) If such person is an officer or servant in the employ of any public body upon such conviction (*o*) he shall, at the discretion of the court, be liable to forfeit his right and

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(*l*) That is, the public body (as defined by s. 7) concerned in the transaction in respect of which the offence was committed.

(*m*) As to what is a public office, see s. 7.

(*n*) The Corrupt Practices Act, 1883, s. 37, provides that every person who, in consequence of conviction, or of the report of an election court under that Act, or the Municipal Corporations Act, 1882, Part IV., or under any other Act for the time being in force, relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void. By s. 39, the registration officer (*i.e.*, the clerk of the county council or town clerk) in every county and borough is required annually to make out a list of persons disqualified to vote by reason of corrupt practices, and to send this list to the overseers of every parish in the county or borough, and the overseers are to publish this list, and omit the name of every person named in it from the list of voters prepared by them. By the Municipal Elections (Corrupt Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 24, *ante*, p. 358, the town clerk of every municipal borough is required annually, in July, to make out a list of persons disqualified by corrupt practices to vote at a municipal election in the borough, and to send a copy to the overseers of every parish in the borough, and the overseers must omit the names of the persons named therein from the burgess list. It seems to follow from the text that the lists prepared by clerks of the peace and town clerks under these enactments must include the names of all persons convicted under this Act.

(*o*) This consequence will apparently follow, whether the conviction is for a first or a subsequent conviction.

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claim to any compensation or pension to which he would otherwise have been entitled.

Savings.

3.—(1.) Where an offence under this Act is also punishable under any other enactment, or at common law, such offence may be prosecuted and punished either under this Act, or under the other enactment, or at common law, but so that no person shall be punished twice for the same offence (*p*).

(2.) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office (*q*).

Restriction on prosecution.

4.—(1.) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General (*r*).

(2.) In this section the expression "Attorney-General" means the Attorney or Solicitor-General for England, and as respects Scotland, means the Lord Advocate, and as respects Ireland, means the Attorney or Solicitor-General for Ireland.

Expenses of prosecution.

5. The expenses of the prosecution of an offence against this Act shall be defrayed in like manner as in the case of a felony (*s*).

Jurisdiction of quarter sessions.

6. A court of general or quarter sessions shall in England have jurisdiction to inquire of, hear, and determine an offence under this Act (*t*).

Interpretation.

7. In this Act—

The expression "public body" means any council of a county or county of a city or town, any council of a municipal

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(*p*) It appears from Com. Dig. "Officer" (N.), that all officers, whether such by the common law, or made pursuant to statute, are punishable for corruption or oppressive proceedings, according to the nature and heinousness of the offence, either by indictment, attachment, action at the suit of the party injured, loss of their offices, etc. It is also stated that bribery of an officer is punishable at common law by fine and imprisonment. It is unlikely, however, that any offence which is within the terms of this Act will be dealt with otherwise than as herein provided.

(*q*) In other words, the Act will apply to the corrupt acts of members, officers, or servants who are such *de facto*, though the validity of their election or appointment may be open to question.

(*r*) It is entirely in the discretion of the Attorney-General to grant or refuse his consent. See *Ex parte Hurter*, 47 J. P. 724; 15 Cox C. C. 166. But for the provision in the text, a prosecution could have been instituted by any person.

(*s*) By 7 Geo. 4, c. 64, s. 22, the court before which any person shall be prosecuted or tried for any felony may order payment of the expenses of the prosecutor and his witnesses in attending before the examining magistrate and the grand jury, and in otherwise carrying on the prosecution. By s. 25, these expenses are payable by the treasurer of the county. By 29 & 30 Vict. c. 52, s. 1, in any case of felony the examining magistrate can make an order for costs and expenses of the prosecutor and his witnesses, though there may have been no committal. And by 30 & 31 Vict. c. 35, the provisions of the preceding Acts were extended to the expenses of witnesses for the defence who were bound over to appear at the trial.

(*t*) It seems doubtful whether any such provision was necessary to give jurisdiction to the quarter sessions. The general rule with regard to indictable offences newly created by statute, is that the quarter sessions has jurisdiction unless it is otherwise expressly provided. "Archbold's Quarter Sessions," p. 912; Com. Dig. "Justice of the Peace," B. (3); and see *R.* v. *Cock*, 4 M. & S. 71

borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in the United Kingdom (*u*):

The expression "public office" means any office or employment of a person as a member, officer, or servant of such public body:

The expression "person" includes a body of persons corporate or unincorporate:

The expression "advantage" includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and includes any aid, vote, consent or influence, or pretended aid, vote, consent or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined.

8. * * * **9.** * * * (*x*).

10. This Act may be cited as the Public Bodies Corrupt Practices Act, 1889. Short title.

TECHNICAL INSTRUCTION ACT, 1889.

(52 & 53 VICT. CAP. 76) (*y*).

An Act to facilitate the Provision of Technical Instruction.

[30th August, 1889.]

* * * * *

1.—(1.) A local authority may from time to time out of the local rate (*z*) supply or aid the supply of technical or manual Power for local authority to

(*u*) This definition includes all sanitary authorities, urban and rural.

(*x*) Sections 8 and 9 apply to Scotland and Ireland respectively.

(*y*) This Act enables local authorities (including county councils) to supply or aid the supply of technical or manual instruction as defined by s. 8, *infra*. It is amended or explained by the Technical Instruction Act, 1891 (54 Vict. c. 4), *post*. The Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29), *post*, facilitates the acquisition and holding of land for the purposes of such institutions, and the Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60), s. 1, *post*, empowers county councils to make contributions for the purposes of technical education out of sums received by them in respect of the residue of the English share of the local taxation (customs and excise) duties under that Act. Such contributions may be made over and above the limited amount which may be raised by rates under the present Act.

County councils may also acquire schools for science and art and literary and scientific institutions under the 54 & 55 Vict. c. 61, *post*; as to their powers with respect to intermediate education in Wales, see the 52 & 53 Vict. c. 40, *ante*, p. 423.

(*z*) The "local rate," in the case of a county council, is the county fund, s. 4, *infra*.

Sect. 1 (1). instruction (*t*), to such extent and on such terms as the authority think expedient, subject to the following restrictions, namely :—

supply or aid the supply of technical instruction.

(a.) The local authority shall not out of the local rate supply or aid the supply of technical or manual instruction to scholars receiving instruction at an elementary school in the obligatory or standard subjects prescribed by the minutes of the Education Department for the time being in force ;

(b.) It shall not be required, as a condition of any scholar being admitted into or continuing in any school aided out of the local rate, and receiving technical or manual instruction under this Act that he shall attend at or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere : Provided that in any school, the erection of which has been aided under this Act, it shall not be required as a condition of any scholar being admitted into or continuing in such school, that he shall attend at or abstain from attending any Sunday school or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere ;

(c.) No religious catechism or religious formulary, which is distinctive of any particular denomination, shall be taught at any school aided out of the local rate, to a scholar attending only for the purposes of technical or manual instruction under this Act, and the times for prayer or religious worship, or for any lesson or series of lessons on a religious subject, shall be conveniently arranged for the purpose of allowing the withdrawal of such scholar therefrom ;

(d.) A local authority may, on the request of the school board for its district or any part of its district, or of any other managers of a school or institution within its district for the time being in receipt of aid from the Department of Science and Art, make, out of any local rate raised in pursuance of this Act, to such extent as may be reasonably sufficient, having regard to the requirements of the district, but subject to the conditions and restrictions contained in this section, provision in aid of the technical and manual instruction for the time being supplied in schools or institutions within its district, and shall distribute the provision so made in proportion to the nature and amount of efficient

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(*t*) See the definition, s. 8, *infra* ; as to aiding the technical and manual instruction supplied in institutions outside the county, and providing scholarships and paying the fees of students ordinarily resident within the county, see the Technical Instruction Act, 1891, s. 1, *post*.

technical or manual instruction supplied by those schools or institutions respectively (*u*); Sect. 1 (1).

(e.) Where such other managers of a school or institution receive aid from a local authority in pursuance of this section, the local authority shall, for the purposes of this Act, be represented on the governing body of the school or institution in such proportion as will, as nearly as may be, correspond to the proportion which the aid given by the local authority bears to the contribution made from all sources other than the local rate and money provided by Parliament to the cost of the technical or manual instruction given in the school or institution aided;

(f.) If any question arises as to the sufficiency of the provision made under this section, or as to the qualification of any school or institution to participate in any such provision, or as to the amount to be allotted to each school or institution, or as to the extent to which, or mode in which, the local authority is to be represented on the governing body of any such school or institution, the question shall be determined by the Department of Science and Art: Provided that no such provision, out of any rate raised in pursuance of this Act, shall be made in aid of technical or manual instruction in any school conducted for private profit; and

(g.) The amount of the rate to be raised in any one year by a local authority for the purposes of this Act shall not exceed the sum of one penny in the pound.

(2.) A local authority may for the purposes of this Act appoint a committee consisting either wholly or partly of members of the local authority, and may delegate to any such committee any powers exerciseable by the authority under this Act, except the power of raising a rate or borrowing money.

(3.) Nothing in this Act shall be construed so as to interfere with any existing powers of school boards with respect to the provision of technical and manual instruction (*u*).

2. It shall be competent for any school board or local authority, should they think fit, to institute an entrance examination for persons desirous of attending technical schools or classes under their management or to which they contribute. Provision for entrance examination.

(*u*) A school provided by a school board must be a "public elementary school," that is to say, elementary education must be the principal part of the education there given. See Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 3, 14. This does not necessarily exclude other subjects. It is believed that the law officers of the Crown have advised the Education Department that school boards may provide their scholars with technical or manual instruction, and that these boards commonly provide such instruction and receive aid from the Science and Art Department.

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Parliamentary grants in aid of technical instruction.

3. The conditions on which parliamentary grants may be made in aid of technical or manual instruction shall be those contained in the minutes of the Department of Science and Art in force for the time being.

Provisions as to local authorities.

4.—(1.) For the purposes of this Act the expression "local authority" shall mean the council of any county or borough and any urban sanitary authority within the meaning of the Public Health Acts.

(2.) The local rate for the purposes of this Act shall be—

(a.) In the case of a county council, the county fund (*x*);

(b.) In the case of a borough council, the borough fund or borough rate;

(c.) In the case of an urban sanitary authority not being a borough council, the district fund and general district rate, or other fund or rate applicable to the general purposes of the Public Health Acts;

(3.) A county council may charge any expenses incurred by them under this Act on any part of their county for the requirements of which such expenses have been incurred (*y*).

(4.) A local authority may borrow for the purposes of this Act—

(a.) In the case of a county council, in manner provided by the Local Government Act, 1888 (*z*);

51 & 52 Vict. c. 41.

(b.) In the case of a borough council, as if the purposes of this Act were purposes for which they are authorised by section one hundred and six of the Municipal Corporations Act, 1882, to borrow;

45 & 46 Vict. c. 50.

(c.) In the case of an urban sanitary authority not being a borough council, as if the purposes of this Act were purposes for which they are authorised to borrow under the Public Health Acts.

Audit of accounts of aided schools.

5. Where the managers of a school or institution receive aid from a local authority in pursuance of this Act, they shall render to the local authority such accounts relating to the application of the money granted in aid, and those accounts shall be verified and audited in such manner as the local authority may require and the managers shall be personally liable to refund to the local authority any money granted under this Act, and not shown to be properly applied for the purposes for which it was granted.

Audit of accounts of urban sanitary authority.

6. The accounts of the receipts and expenditure of an urban sanitary authority under this Act shall be audited in like manner

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(*x*) See Local Government Act, 1888, s. 68, *ante*, p. 130.

(*y*) Expenses so charged will be "special expenses." Local Government Act, 1888, s. 68.

(*z*) See Local Government Act, 1888, s. 69, *ante*, p. 132.

and with the like incidents and consequences, as the accounts of their receipts and expenditure under the Public Health Act, 1875. Sect. 6.

7. * * * * * (*a*).

8. In this Act—

Meaning of technical and manual instruction.

The expression "technical instruction" shall mean instruction in the principles of science and art applicable to industries, and in the application of special branches of science and art to specific industries or employments. It shall not include teaching the practice of any trade or industry or employment, but, save as aforesaid, shall include instruction in the branches of science and art with respect to which grants are for the time being made by the Department of Science and Art, and any other form of instruction (including modern languages and commercial and agricultural subjects), which may for the time being be sanctioned by that Department by a minute laid before Parliament and made on the representation of a local authority that such a form of instruction is required by the circumstances of its district.

The expression "manual instruction" shall mean instruction in the use of tools, processes of agriculture, and modelling in clay, wood, or other material.

9. This Act shall not extend to Scotland. Extent of Act.

10. This Act may be cited as the Technical Instruction Act, 1889. Short title.

COUNTY COUNCILS ASSOCIATION EXPENSES ACT, 1890 (*b*).

(53 VICT. CAP. 3.)

An Act to remove doubts as to the Legality of certain Payments by County Councils. [29th March, 1890.]

WHEREAS an association of county councils of England and Wales has been formed for the purpose of consultation as to their common interests and the discussion of matters relating to local Government:

* * * * *

1. The council of an administrative county may pay out of the county fund, as general expenses incurred by them in the execution Power to defray expenses in

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(*a*) Section 7 relates to Ireland exclusively.

(*b*) This Act extends to county councils a principle which has been recognized in the Poor Law Conferences Act, 1883 (46 Vict. c. 11), and the Public Health and Local Government Conferences Act, 1885 (48 & 49 Vict. c. 22). In these Acts the usefulness of discussing questions relating to poor law or local government is recognized. The above Act goes a step further in permitting a subscription to the fund of the County Councils Association.

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connexion with association of county councils. 51 & 52 Vict. c. 41.

of their duties under the Local Government Act, 1888, any sum not exceeding thirty-one pounds and ten shillings in any one year, as an annual or other subscription to the funds of the association, as well as any reasonable expenses of the attendance of representatives, not exceeding in any case four, at meetings of the association.

Short title and extent of Act.

2. This Act may be cited for all purposes as the County Councils Association Expenses Act, 1890.

This Act does not extend to Scotland or Ireland.

LUNACY ACT, 1890.

(53 Vict. Cap. 5.)

An Act to consolidate certain of the Enactments respecting Lunatics (*c*).

[29th March, 1890.]

* * * * *

Preliminary.

Short title.

1. This Act may be cited as the Lunacy Act, 1890.

Extent of Act.

2. Save as in this Act otherwise expressly provided, this Act shall not extend to Scotland or Ireland.

Commencement.

3. This Act shall come into operation, save as in this Act otherwise expressly provided, on the first day of May one thousand eight hundred and ninety.

* * * * *

Chronic lunatics may be received in workhouses in certain cases.

26.—(1.) The visitors of any asylum may, with the consent of the Local Government Board and the Commissioners, and subject to such regulations as they respectively prescribe, make arrangements with the guardians of any union for the reception into the workhouse of any chronic lunatics, not being dangerous, who are in the asylum and have been selected and certified by the manager of the asylum as proper to be removed to the workhouse (*d*).

(2.) Every lunatic received in a workhouse under this section shall, while he remains there, continue a patient on the books of the asylum for the purposes of this Act so far as it relates to lunatics removed to asylums.

(*c*) This Act, as its title states, consolidates with amendments most of the earlier Acts respecting lunatics. It repeals and re-enacts, for example, certain sections of the Local Government Act, 1888. It has itself been amended by the Lunacy Act, 1891 (54 & 55 Vict. c. 65), *post*. Only those sections of the Act are included here which relate to county councils.

(*d*) The visitors above referred to are the visiting committee appointed in counties by the county councils under s. 169 (*post*). For the definition of the terms "asylum," "commissioners," "managers," etc., see s. 341, *post*.

Institutions in which Lunatics may be received.

Sect. 27 (1).

Institutions to which lunatics may be removed.

27.—(1.) Subject to the restrictions in this section mentioned, every summary reception order, and every reception order made by two or more commissioners, may authorize the reception of the lunatic named in the order not only into an asylum of the county or borough in which the place from which the lunatic is sent is situate, but also into any other institution for lunatics.

(2.) A lunatic shall not under any such order be sent elsewhere than to an asylum of the county or borough in which the place from which he is sent is situate, unless there is no such asylum, or there is a deficiency of room, or there are some special circumstances by reason whereof the lunatic cannot conveniently be taken to such asylum, and the deficiency of room or special circumstances shall be stated in the order (*e*).

(3.) A pauper lunatic shall not be received under an order into any asylum other than an asylum belonging wholly or in part to the county or borough in which the place from which the lunatic is sent or the parish in which he is adjudged to be settled is situate, unless there is a subsisting contract for the reception of lunatics of such county or borough therein, or such borough otherwise contributes to the asylum into which the pauper is to be received, except the order is endorsed by a visitor of that asylum.

(4.) The manager of a hospital or licensed house shall not be bound to receive any lunatic under any such order except in pursuance of a subsisting contract.

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Commissioners and visitors not to sign certificates.

33. A medical practitioner who is a commissioner or a visitor shall not sign any certificate for the reception of a patient into a hospital or licensed house, unless he is directed to visit the patient by a judicial authority under this Act, or by the Lord Chancellor or a Secretary of State, or a committee appointed by the judge in lunacy (*f*).

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Duration of Reception Orders.

Duration of reception orders.

38.—(1.) Every reception order dated after or within three months before the commencement of this Act, shall expire at the end of one year from its date, and any such order dated three months or more before the commencement of this Act shall expire at the end of one year after the commencement of this Act unless such orders respectively are continued as herein-after provided.

(*e*) This section is amended by s. 6 of the Lunacy Act, 1891, *post*, to meet the case of a lunatic in a workhouse situate in a county which does not include the union to which the workhouse belongs.

(*f*) This prohibition applies to a member of the visiting committee appointed under s. 169 (*post*). The judicial authority referred to in this section is a justice of the peace specially appointed to sign reception orders under the Act, or a county court judge, or a magistrate as defined by s. 341, *post* (see s. 9).

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(2.) In the case of any institution for lunatics the commissioners may by order under their seal direct that the reception orders of patients detained therein shall, unless continued as herein-after provided, expire on any quarterly day next after the days on which the orders would expire under the last preceding sub-section.

(3.) An order for the removal of a patient from one custody to another shall not be deemed to be a reception order within this section, but the patient who is removed shall after removal be deemed to be detained under the original reception order as a lunatic, and such order shall expire in accordance with the provisions of this section unless continued as herein-after provided.

(4.) * * * * * (*g*).

(5.) The person sending the special report shall give to the commissioners such further information concerning the patient to whom the special report relates as they require.

(6.) If in the opinion of the commissioners the special report does not justify the accompanying certificate, then—

(a.) In the case of a patient in a hospital or licensed house or under care as a single patient, the commissioners shall make further inquiry, and if dissatisfied with the result they or any two of them may by order direct his discharge :

(b.) In the case of a patient in an asylum, the commissioners shall send a copy of the report, with any other information in their possession relating to the case, to the clerk to the visiting committee of the asylum (*h*), and the committee, or any three of them, shall thereupon investigate the case and may discharge the patient or give such directions respecting him as they may think proper.

(7.) The manager of any institution for lunatics, and any person having charge of a single patient, who detains a patient after he has knowledge that the order for his reception has expired, shall be guilty of a misdemeanor.

(8.) The special reports and certificates under this section may include and refer to more than one patient.

(9.) A certificate under the hand of the secretary to the commissioners that an order for reception has been continued to the date therein mentioned shall be sufficient evidence of the fact.

(10.) This section shall not apply to lunatics so found by inquisition.

(*g*) This sub-section (as to the period for which a reception order is to remain in force) is repealed, and a new sub-section substituted by s. 7 of the Lunacy Act, 1891, *post*.

(*h*) As to the visiting committee, see s. 169, *post*. This section is only material for purposes of this work in so far as it imposes the duty of investigation, as above stated, on that committee.

PART II. Sect. 39 (1).

CARE AND TREATMENT.

Reports after Reception.

Reports upon and visits to private patients.

39.—(1.) The medical officer of every institution for lunatics, and the medical attendant of every single patient shall at the expiration of one month after the reception of a private patient prepare and send to the commissioners a report as to the mental and bodily condition of the patient, in such form as the commissioners direct (*i*).

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(7.) In the case of a private patient in an asylum or hospital the commissioners, after receiving the report, shall either make arrangements for a visit being paid, as soon as conveniently may be, to the patient therein named by one or more of the commissioners, who shall report to the commissioners whether the detention of the patient is or is not proper; or the commissioners shall send a copy of the report to the clerk to the visiting committee of the asylum or to the managing committee of the hospital, and one or more members of the committee shall thereupon, as soon as conveniently may be, visit the patient named in the report and report to the committee whether his detention is or is not proper, and the committee, or any three of them, may upon consideration of such last-mentioned report, by writing under their hands discharge the patient or give such directions with regard to him as they think fit.

(8.) If within a month after the reception of any private patient, the institution for lunatics or house into which he was received is visited by one or more commissioners or by any visitors, and such patient is there seen and examined by him or them, and the propriety of his detention reported on in like manner as by this section provided, no special visit shall necessarily be paid to such patient after the receipt of any such report.

(9.) If the commissioners in any case under this section determine that a patient ought to be discharged they may make an order for his discharge.

* * * * *

Absence on Trial or for Health.

Absence on trial or for health.

55.—(1.) Any two visitors of an asylum, with the advice in writing of the medical officer, may permit a patient in the asylum to be absent on trial so long as they think fit.

(2.) The visitors may make an allowance to a pauper lunatic absent from the asylum on trial, not exceeding the charge in the asylum, and that allowance, and no more, shall be paid for him as if he were in the asylum.

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(*i*) The omitted sub-sections relate only to licensed houses and single patients. Section 8 of the Act of 1891, *post*, provides that s. 39 shall not apply to lunatics received under a removal order, or so found by inquisition.

Sect. 55 (6).

(6.) A commissioner as regards any hospital or licensed house, and two members of the managing committee of a hospital, and two of the visitors of a house licensed by visitors (*k*), may, of their own authority, permit a pauper patient to be absent upon trial for such period as may be thought proper, and may make or order to be made an allowance to the pauper, not exceeding the charge for him in the hospital or house, which shall be payable as if he were in the hospital or house, but shall be paid over to him or for his benefit as the commissioners or visitors may direct.

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(8.) If a person allowed to be absent on trial for any period does not return at the expiration thereof, and a medical certificate certifying that his detention as a lunatic is no longer necessary is not sent to the visitors of the asylum or the manager of the hospital or house, he may at any time within fourteen days after the expiration of the period of trial be retaken as in the case of an escape.

* * * * *

Boarding-out Lunatics.

Maintenance for pauper lunatic taken charge of by relatives.

57.—(1.) Where application is made to the visiting committee of an asylum by any relative or friend of a pauper lunatic confined therein that he may be delivered over to the custody of such relative or friend, the committee may, upon being satisfied that the application has been approved by the guardians of the union to which the lunatic is chargeable or the local authority liable for his maintenance, and, in case the proposed residence is outside the limits of such union or the area subject to such local authority, then also by a justice having jurisdiction in the place where the relative or friend resides, and that the lunatic will be properly taken care of, order the lunatic to be delivered over accordingly.

(2.) Where any such order is made, the authority liable for the maintenance of the lunatic shall pay to the person to whom the lunatic is delivered such allowance for the maintenance of the lunatic, not exceeding the expenses which would be incurred on his account if he were in the asylum, as such authority on the recommendation of the visiting committee of the asylum from which the lunatic was delivered over thinks proper.

51 & 52 Vict. c. 41.

(3.) For the purposes of section twenty-four, sub-section (2) (f), of the Local Government Act, 1888, a lunatic boarded out by the authorities of any asylum shall be deemed to be a lunatic maintained in an asylum (*l*).

(*k*) The word "visitors" was a slip for "justices," and the mistake has been set right by 54 & 55 Vict. c. 65, s. 9 (2), *post*. The same sub-section substitutes for "the commissioners or visitors," "such commissioners or such two visitors."

(*l*) See this sub-section, *ante*, p. 56.

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Removal of lunatic in a hospital or licensed house by guardians.

61.—(1.) The authority liable for the maintenance of a pauper lunatic detained in a hospital or licensed house may make an order for the removal of the lunatic (*m*), and may direct the mode of removal.

(2.) Upon production to the manager of the hospital or house of a copy of the order he shall forthwith remove the patient or suffer him to be removed.

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Removal of lunatic boarded out into asylum.

63. Where the visiting committee of an asylum has made an order for a pauper lunatic in the asylum to be delivered to the custody of a relative or friend (*n*), any two members of the committee may at any time, if they think fit, order the lunatic to be removed to the asylum.

Removal of pauper into county asylum.

64. Any two visitors of an asylum may order a pauper lunatic chargeable to any union within any county or borough to which the asylum wholly or in part belongs, or to such county or to any county for the reception of the pauper lunatics whereof into that asylum there is a subsisting contract, to be removed to that asylum from any other institution for lunatics in which he may be detained.

Removal of pauper from asylum.

65.—(1.) Any two visitors of an asylum may order a pauper lunatic in the asylum to be removed to some other institution for lunatics.

(2.) A lunatic shall not be removed under this section without the consent in writing of two Commissioners, except to—

(a.) An asylum within or belonging wholly or in part to the county within which the asylum from which the lunatic is removed is situate, or to the county in some parish of which the lunatic may have been adjudged to be settled; or

(b.) A hospital or licensed house within any such county as aforesaid; or

(c.) An institution for lunatics into which the lunatic can be received under a subsisting contract.

Directions as to execution of order for removal.

66. The visitors making an order for the removal of a pauper lunatic may by the order require any relieving officer, or other officer of the union, county or borough to which the lunatic is chargeable, or may authorise any other person, to execute the same.

Restriction upon removal of paupers by two visitors.

67. A pauper lunatic shall not be removed under any order for removal made by two visitors without a medical certificate signed by the medical officer of the institution for lunatics from which the

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(*m*) See the amendment to this sub-section in s. 11 of the Lunacy Act, 1891, *post*, specifying the workhouse to which the lunatic is to be removed.

(*n*) See s. 57, *ante*.

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patient is to be removed, certifying that he is in a fit condition of bodily health to be removed.

* * * * *

Removal orders to be in duplicate.

70.—(1.) Every order for the removal of a lunatic from an institution for lunatics or from the charge of any person and the consent of the commissioners thereto, where required, shall be in duplicate. One duplicate shall be delivered to the manager of the institution for lunatics or the person from whose care the lunatic is removed, and the other to the manager of the institution for lunatics, or the person into whose care the lunatic is removed.

(2.) Every such order, with such consent as aforesaid where required, shall be sufficient authority for the removal and reception of the lunatic, in accordance with the order.

(3.) The manager of the institution from which, or the person from whose care the lunatic is removed under any such order, shall deliver, free of expense, a copy of the reception order and documents accompanying the same to the person executing the order for removal, to be by him delivered to the manager of the institution into which or the person into whose care the lunatic is removed.

(4.) Every such copy shall be certified under the hand of the person whose duty it is to deliver the same.

* * * * *

Discharge of Lunatics.

Discharge of private patient.

72.—(1.) A private patient detained in an institution for lunatics, or under care as a single patient, shall be discharged if the person on whose petition the reception order was made by writing under his hand so directs.

(2.) If that person is dead, or incapable by reason of insanity, absence from England, or otherwise, of signing an order for discharge, or, if a patient having been originally classified as a pauper is afterwards classified as a private patient, the person who made the last payment on account of the patient, or the husband or wife, or if there is no husband or wife, or the husband or wife is incapable as aforesaid, the father, or if there is no father, or he is incapable as aforesaid, the mother of the patient, or, if there is no mother, or she is incapable, then any one of the nearest of kin of the patient, may give the direction for his discharge.

(3.) If there is no person qualified to direct the discharge of a patient under this section, or no person able or willing to act, the commissioners may order his discharge.

Discharge of pauper in hospital or house.

73. The authority liable for the maintenance of a pauper lunatic detained in a hospital or licensed house may make an order for the discharge of the lunatic, and may direct the mode of discharge, and upon production to the manager of the hospital or house of a copy of the order he shall forthwith discharge the patient, or suffer him to be discharged.

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74. A patient shall not be discharged under the provisions of the two preceding sections if the medical officer of the institution, or, in the case of a single patient, his medical attendant, certifies in writing that the patient is dangerous and unfit to be at large, together with the grounds on which the certificate is founded, unless two of the visitors of the asylum, or the commissioners visiting the hospital or house, or the visitors of the house, or in the case of a single patient, one of the commissioners, after the certificate has been produced, consent in writing to the patient's discharge.

Restriction on discharge.

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77.—(1.) Any three visitors of an asylum may order the discharge of any person detained therein whether he is recovered or not.

Visitors may discharge patients in asylums.

(2.) Any two such visitors, with the advice in writing of the medical officer, may order the discharge of any person detained in the asylum.

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79. When application is made to the visiting committee of an asylum by a relative or friend of a pauper lunatic confined therein, requiring that he may be delivered over to the custody and care of such relative or friend, any two of the visitors may, if they think fit, discharge the lunatic upon the undertaking of the relative or friend, to their satisfaction, that the lunatic shall be no longer chargeable to any union, county, or borough, and shall be properly taken care of and prevented from doing injury to himself or others.

Discharge of pauper on application of relative or friend.

80.—(1.) When the visitors of an asylum order a pauper lunatic confined therein to be discharged, except on the application of a relative or friend, they may, when they think fit, send a notice in writing, signed by the clerk of the asylum, by post or otherwise, of their intention to discharge the lunatic to a relieving officer of the union to which the lunatic is chargeable, or to the clerk of the local authority liable for his maintenance.

Visiting committee may send notice of intention to discharge pauper lunatic to relieving officer or clerk of local authority.

(2.) Upon receipt of such notice, the relieving officer or clerk shall cause the lunatic upon his discharge to be forthwith removed to the workhouse of the union to which the lunatic is chargeable, or, if the lunatic is chargeable to a county or borough (*o*), to the workhouse of the union from which he was sent to the asylum.

PART VI.

VISITORS OF LUNATICS.

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Visiting Committees of Asylums.

169.—(1.) For every asylum there shall be a visiting committee appointed annually by the local authority (*p*), consisting of not less than seven members.

Constitution of visiting committee.

(*o*) A lunatic may be chargeable to a county or borough under s. 290, *post*.

(*p*) A local authority is defined by s. 240, *post*. The expression includes a county council.

Sect. 169 (2).

(2.) The visiting committee of a district asylum (*q*) shall be constituted of the number of members fixed by the agreement under which the asylum is provided.

(3.) Where there is more than one asylum, the local authority (*r*) may appoint one committee for the management and control of all the asylums, and such committee shall appoint a sub-committee for each separate asylum, and may delegate to that sub-committee such powers and duties as the committee from time to time think fit.

(4.) Where a county borough has contributed towards the cost of any county asylum, the council of the borough may, if they so desire, appoint to be members of the visiting committee of the asylum such number of members of the council as may be agreed upon, or in default of agreement be determined by the Commissioners under the Local Government Act, 1888 (*s*), or after they have ceased to hold office, by arbitration under that Act (*t*). Such appointment shall be in substitution for any appointment previously made on the part of the borough.

51 & 52 Vict. c. 41.

(5.) Where a borough, not being a county borough, has contributed towards the cost of any county asylum, and the representatives of the borough on the county council are not entitled to vote for the appointment by the council of visitors of the asylum, the council of the borough may appoint two persons to be members of the committee (*u*).

(6.) During the continuance of a contract for the reception of the pauper lunatics of a county borough or borough specified in the Fourth Schedule into a county asylum, the council of the borough shall appoint a visiting committee to visit the lunatics sent from such county borough or borough in the asylum.

Mode of election of visiting committee.

170. Unless some other day is appointed by the standing orders of the local authority, the visiting committee shall be appointed at the quarterly meeting of the local authority in November (*v*).

Vacancies to be filled up.

171.—(1.) If a visitor dies or resigns, or becomes incapable or disqualified (*x*) to act, the authority by whom he was appointed shall, as soon as possible, appoint in his place some qualified person, and the new appointment shall be made in the same manner as the annual election of visitors.

(*q*) A district asylum is one provided by or for two or more local authorities. See s. 242, *post*.

(*r*) A local authority is defined by s. 240, *post*. The expression includes a county council.

(*s*) See s. 61 of that Act, *ante*, p. 117.

(*t*) See s. 62 of that Act, *ante*, p. 119.

(*u*) Representatives of the borough will not be entitled to vote in the cases provided for by s. 35, sub-s. (6) of Local Government Act, 1888, *ante*, p. 81. *i.e.*, in respect of matters involving expenditure on account of which the parishes in the borough are not, for the time being, liable to be assessed equally with the rest of the county to county contributions.

(*v*) As to the quarterly meeting, see the Municipal Corporations Act, 1882, Sched. 2, rule (2), and the notes thereto, *ante*, p. 335. For "November" in the text it is now necessary to substitute "March," see 54 & 55 Vict. c. 68, s. 1, *post*.

(*x*) As to the disqualification of a member, see s. 174, *post*.

(2.) The continuing members of a visiting committee may act notwithstanding any vacancy in the body. Sect. 171 (2).

172.—(1.) A visiting committee shall hold office until the first meeting of their successors. Duration of office.

(2.) If default is made in electing a visiting committee, the visiting committee last elected shall continue in office as if they had been duly re-elected.

173. The visiting committee of every asylum shall, previously to the month of June in every year, examine the accounts of the treasurer and clerk of the asylum, and shall report the same to the next meeting of the local authority, or of each local authority to whom the asylum wholly or in part belongs. Examination of accounts.

174.—(1.) A member of a visiting committee shall not be interested either in his own name or in the name of any other person in any contract entered into or work done for the committee, and shall not derive any profit or emolument whatsoever from the funds of the asylum. Members of visiting committee not to be interested.

(2.) This provision shall not extend to any interest which a member of a visiting committee may have by reason of his being a shareholder of a company which has entered into any contract with or done any work for the visiting committee, but he shall not be entitled to vote in respect of such contract or work (*y*).

175.—(1.) The provisions of section eighty-two of the Local Government Act, 1888 (*z*), with respect to the proceedings of committees of county councils, shall apply to the proceedings of every visiting committee appointed wholly or partly by a county council, and the chairman of such committee may be elected accordingly. Meetings of visiting committee.

(2.) To other visiting committees the following provisions shall apply :—

(a.) The members of the committee shall within one month after their election meet at some convenient place, to be named in a notice in writing given by two or more of such members, or by the clerk of the outgoing committee by the direction of two or more of such members ;

(b.) Notices of meetings shall be given to each member personally, or left at his place of abode, or sent by post seven days at least before the time appointed for the meeting ;

(c.) The members shall at the first meeting elect one of their number to be chairman of the committee.

(d.) The chairman shall preside at all meetings at which he is present. In case of his absence from any meeting the members present shall elect one of their member to be chairman of the meeting ;

(*y*) The cases cited at p. 253, *ante*, may be referred to on the subject of disqualification by interest.

(*z*) See this section, *ante*, p. 157.

Sect. 175 (2).

(e.) Any meeting may be adjourned from time to time and from place to place;

(f.) The committee shall meet as often as they may think fit;

(g.) A meeting may be adjourned by two members; for all other purposes three members shall be a quorum;

(h.) Every question shall be decided by a majority of the votes of the members present, and in the event of an equality of votes the chairman shall have a second or casting vote;

(i.) The clerk of the committee shall, whenever required in writing by the chairman or any two members of the committee, or by the manager of the asylum, and the chairman may, whenever he thinks fit, summon a meeting of the committee.

Clerk to visiting committee.

176.—(1.) Every visiting committee shall appoint a clerk (who may also be the clerk to the asylum) at such salary as the committee think fit, and a clerk so appointed may be discharged, and in the event of a vacancy in the office a new clerk may be appointed. The clerk to the visiting committee shall, unless he be sooner discharged, continue in office so long as the committee continue in office.

(2.) A visiting committee may sue and be sued in the name of their clerk, and an action by or against a visiting committee shall not abate by the death or removal of the clerk, but the clerk for the time being shall always be deemed the plaintiff or defendant in the action.

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Visits by visiting committee.

188. At least two members of the visiting committee shall together, once at least in every two months, inspect every part of the asylum, and see every patient therein, so as to give everyone, as far as possible, full opportunity of complaint, and examine the order and certificate or certificates for the admission of every lunatic admitted since the last visitation and the general books kept in the asylum; and shall enter in the visitors book any remarks they think proper in regard to the condition and management of the asylum and the lunatics therein, and shall sign the book upon every visit.

Visits to lunatics received under a contract.

189.—(1.) During the continuance of a contract for the reception of the pauper lunatics of a county borough or other borough in a county asylum not less than two members of the visiting committee of the borough appointed for the purpose shall together, at least once in every six months, visit the asylum and see and examine the lunatics received under the contract, and shall report the result of their visit to the council of the borough.

(2.) The visitors may, if they think fit, be accompanied by a medical practitioner who is not an officer of the asylum, and they may by order direct payment to such medical practitioner of such a sum as they think fit for his services, and such sum shall upon the production of the order be paid to the medical practitioner by the treasurer of the borough.

(3.) Every report under this section shall be entered among the records of the council of the borough, and may be inspected by the Commissioners, and the Commissioners may, if they think fit, require the town clerk of the borough to transmit to them a copy of any such report. Sect. 189 (3).

Reports by visiting committee.

190.—(1.) The visiting committee of every asylum shall in every year lay before each local authority to which the asylum belongs, at their quarterly meeting in November, or at such other time as the local authority appoints, a report in writing of the state and condition of the asylum, and as to its sufficiency to provide the necessary accommodation, and as to its management and the conduct of the officers and servants and the care of the patients therein.

(2.) The committee may in the report make such remarks in relation to any matters connected with the asylum as they think fit.

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Application of Fees for Licences.

Application of moneys received for licences by clerks of the peace.

224.—(1.) All moneys received for licences granted by any justices shall be paid by the clerk of the peace for the county or borough into the county or borough fund.

(2.) The clerk of the peace for every county or borough shall keep an account of all moneys received and paid by him as aforesaid, and of all moneys otherwise received or paid by him in the execution of this Act.

(3.) Such account shall be made up to the thirty-first day of March in each year, or to such other date as the Local Government Board appoint, and shall be signed by two at least of the visitors for the county or borough; and in the case of the clerk of the peace of a county, shall be audited by the same person, in the same manner, and with the same incidents and consequences as the accounts of officers of the county council under the Local Government Act, 1888 (*a*). 51 & 52 Vict. c. 41.

Balance of payments over receipts may be paid out of the funds of the county or borough.

225.—(1.) The justices of every county or borough in quarter or special sessions may order such sums as may be reasonable for payment of the remuneration or salary of the visitors and their clerk, and of all other expenses incurred by or under the authority of the justices or visitors in the execution of this Act, to be paid to the clerk of the peace of the county or borough out of the county or borough fund.

(2.) Every such sum shall be paid out of the county or borough fund by the treasurer thereof, and shall be allowed in his accounts, on the authority of the order by the justices for the payment thereof.

(3.) Every sum ordered to be paid by justices of a county under this section shall be subject to the sanction of the standing joint committee of the county council and quarter sessions as provided by section sixty-six of the Local Government Act, 1888 (*b*).

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(*a*) See s. 71 of that Act, *ante*, p. 136. (*b*) See this section, *ante*, p. 128.

Sect. 238 (1).

PART IX.

County and Borough Asylums.

Obligation to provide Asylums.

Local authorities to provide asylums.

238.—(1.) Every local authority, as defined by this Act (*c*), shall provide and maintain an asylum or asylums for the accommodation of pauper lunatics.

(2.) Where the asylum accommodation of a local authority appears to the local authority to be insufficient, the local authority may supply the deficiency by exercising the powers by this Act conferred for providing asylum accommodation, or by rebuilding or enlarging any existing asylum.

(3.) For the purpose of providing asylum accommodation a local authority may purchase any licensed or other houses and land.

(4.) For the purpose of providing asylum accommodation a local authority not being a county council shall have the same powers as are by section sixty-five of the Local Government Act, 1888, conferred upon a county council (*d*).

51 & 52 Vict. c. 41.

Powers to be exercised by a visiting committee.

239. A local authority shall exercise the powers conferred by this Act for providing asylum accommodation by a visiting committee (*e*), subject, if the local authority thinks fit, to their directions as to which of the methods of providing asylum accommodation authorized by this Act shall be adopted.

Local Authority defined.

Local authority defined.

240. The council of every administrative county and county borough respectively constituted under the Local Government Act, 1888, and the council of each of the boroughs specified in the Fourth Schedule, or in the case of the City of London the common council, shall be a local authority for the purposes of this Act (*f*).

Powers for providing Asylums.

Power to provide asylums for pauper and private patients.

241. A local authority may provide asylum accommodation for pauper and private patients, together or in separate asylums, and may provide separate asylums for idiots or patients suffering from any particular class of mental disorder.

Modes in which asylum may be provided.

242.—(1.) For the purpose of providing asylum accommodation, a local authority may do all or any of the following things:—

(a.) Provide and maintain an asylum alone;

(b.) Agree to unite in providing and maintaining a district asylum with any other local authority or local authorities;

(*c*) See s. 240, *post*.

(*d*) See this section, *ante*, p. 126.

(*e*) As to the appointment of the visiting committee, see s. 169, *ante*, p. 447.

(*f*) For the list of county boroughs, see the Fourth Schedule to the Local Government Act, 1888, and the note to the schedule, *ante*, p. 205.

(c.) Agree to unite with any other local authority or local authorities upon such terms as to payment and otherwise as may be thought proper for the joint use as a district asylum of any existing asylum, and, if they think fit, for the enlargement of the same. Sect. 242 (1).

(2.) Where an agreement to unite has been entered into, an agreement for further union may be entered into between all or any of the local authorities concerned, and for all the purposes of this Act an agreement for further union shall be deemed to be an agreement to unite.

(3.) An agreement to unite shall not be carried into effect without the approval of a Secretary of State.

Contract between council of county borough and visiting committee.

243.—(1.) The council of a county borough may contract with the visiting committee of an asylum for the reception of the pauper lunatics of the borough into the asylum.

(2.) Any such contract may be made for such consideration and upon such terms as to duration, determination, and otherwise as may be agreed between the council of the borough and the visiting committee of the asylum.

(3.) While a contract under this section is in force, making adequate provision for the pauper lunatics of the borough, the council of the borough shall not be required to provide an asylum alone or in union.

(4.) A contract under this section shall not be carried into effect until approved by a Secretary of State.

Provision for case where a county borough has contributed to the cost of a county asylum.

244.—(1.) Where a county borough has contributed to the cost of building and furnishing a county asylum, the existing liability of the borough council shall continue until a new arrangement is made under this section, and the county council shall provide accommodation for and maintain pauper lunatics sent from the borough on the same terms as hitherto.

(2.) Any new arrangement may be made between the county council and all the borough councils concerned, with respect to any such asylum; and if any such new arrangement is made, the borough and county councils may carry into effect any adjustment of property, debts, and liabilities which is the subject of such arrangement. If any council desires to make a new arrangement, and any or all of the other councils refuse to agree to the same, the matter shall be referred to the Commissioners under the Local Government Act, 1888, or, after they have ceased to hold office, to arbitration under that Act (*g*). 51 & 52 Vict. c. 41.

Borough contributing to county asylum exempt.

245.—(1.) Where any borough specified in the Fourth Schedule contributes to a county asylum, such borough shall, so long as it continues to contribute, be deemed to satisfy the requirements of this Act with respect to asylum accommodation.

(*g*) The commissioners have ceased to hold office; see *ante*, p. 119.

Sect. 245 (2).

(2.) The council of the borough may resolve for the purpose of providing asylum accommodation to separate from the county to which it contributes.

(3.) Notice of the resolution to separate shall be given to the clerk of the county council, and upon the expiration of six months from the date of the notice, the council of the borough shall be subject to the obligations imposed by this Act of providing asylum accommodation.

(4.) Notwithstanding a notice to separate, the council of the borough shall continue liable to contribute to the county asylum, until all the pauper lunatics therein belonging to the borough have been removed.

Where borough contracts with county powers of borough to provide an asylum to cease on determination of contract.

246. Where any borough specified in the Fourth Schedule has contracted for the reception of the lunatics of the borough in the asylum of the county in which the borough is situate, the borough shall, on the determination of the contract, cease to be a local authority under this Act, and [*subject to the enactments providing for an additional charge for the maintenance of lunatics in cases where no contribution has been made towards the cost of building and furnishing an asylum*] (*h*), shall be liable to contribute to the county rate of the county in respect of such lunatic asylum in like manner as the rest of the county.

Power of Secretary of State to enforce Act.

Default by county or borough in providing asylum.

247. If the Commissioners report to a Secretary of State that any local authority has failed to satisfy the requirements of this Act as regards asylum accommodation, the Secretary of State may require the local authority to provide such accommodation in such manner as he may direct, and the local authority shall forthwith carry the requisition into effect.

Agreements to unite.

Provisions to be contained in agreements to unite.

248.—(1.) Agreements to unite shall state—

(a.) The number of visitors to be chosen by each contracting party;

(b.) The proportion in which the expenses of providing the asylum are to be borne by each contracting party, and the basis upon which such proportion is fixed;

Form 21.

(c.) Where the agreement provides for the joint user of an existing asylum, the sum to be paid by each contracting party towards expenses already incurred.

(*h*) The words in italics were repealed by the Lunacy Act, 1891, in consequence of the decision in *Howlett* v. *Maidstone*, [1891] 2 Q. B. 110; 60 L. J. Q. B. 570; 65 L. T. (N.S.) 448; 40 W. R. 116; 55 J. P. 549. The substituted enactments are contained in ss. 13—15 of the Act of 1891, *post*.

(2.) Provisions in any agreement to unite, subjecting the visiting committee to any control not provided for by this Act, except the control of the Secretary of State, shall be of no effect (*i*). Sect. 248 (2).

249. The proportion in which the expenses of providing a district asylum are to be borne, as between the uniting counties and boroughs, may be fixed either according to the extent of the accommodation required for each county and borough, or in proportion to the respective population of each county or borough according to the last census for the time being. Apportionment of expenses.

250. An agreement to unite may with the consent in writing of a majority of the visitors of each contracting local authority and with the sanction of the Secretary of State be altered or varied, but not so as to contain any provision which might not have been contained in an agreement to unite in the first instance. Power to vary agreement to unite.

251.—(1.) Every agreement to unite shall as soon as possible be reported to the local authorities interested. Agreement to unite to be reported and delivered to clerk of local authority.

(2.) The original of every agreement to unite, and of every agreement varying an agreement to unite, shall be delivered to the clerk of the local authority within whose administrative area the asylum to which the same relates is situate or is intended to be situate, and shall be kept by him among the records of the local authority.

(3.) The original agreement so delivered may be inspected without payment by any Commissioner and by any member of the council of any of the contracting local authorities.

(4.) The clerk of a local authority to whom any such agreement is delivered shall cause copies to be made thereof, and shall within twenty days after delivery to him of the original send one copy to the Commissioners and another copy to each of the contracting local authorities.

252. Where under an agreement to unite a sum is to be paid towards the expenses already incurred by a local authority in relation to an existing asylum, the sum shall be paid to the treasurer of the local authority as part of the county or borough fund and shall be applied to purposes for which capital is properly applicable. Application of money paid for expenses already incurred.

253. When an agreement to unite has been reported, each local authority shall elect out of their body the number of visitors agreed to be chosen by them, and the visitors so chosen shall carry the agreement into effect and shall be the visiting committee of the asylum until the election of a visiting committee in their place (*k*). Visitors to be chosen.

Purchase of Land and other incidental Powers.

254.—(1.) A visiting committee authorised to provide asylum accommodation may agree upon plans and estimates, and contract Powers of committee to provide asylum.

(*i*) A form of agreement to unite is contained in Sched. 2, Form 21, *post*.
(*k*) As to the election of a visiting committee, see s. 169, *ante*, p. 447.

Sect. 254 (1). for the purchase of lands and buildings with or without fittings and furniture, and for the erection, restoration, enlargement, and furnishing of buildings, and for the supply of clothing, and for all the matters necessary for carrying into effect the authority conferred upon them.

(2.) Plans and contracts [for the purchase of lands and buildings and for the erection, restoration, and enlargement of buildings] (*l*) agreed upon by a visiting committee shall not be carried into effect until approved by a Secretary of State.

(3.) A visiting committee shall report to the local authority or local authorities by whom they were elected, all plans, estimates, and contracts agreed upon, and also the amount to be paid by each local authority, and such plans, estimates, and contracts shall be subject to the approval of the local authority, to whom they are to be reported, except where the amount to be expended does not exceed an amount previously fixed by the local authority.

(4.) In the event of a difference between any local authorities as to whether any plan, estimate, or contract ought to be approved, the local authority withholding approval shall, within four months after the plan, estimate, or contract has been reported to them, send to a Secretary of State a statement in writing of their objections, and the Secretary of State may direct the plan, estimate, or contract to be carried into execution, with or without any alterations, or he may direct such other plan, estimate, or contract, as he thinks fit, to be carried into execution, and the decision of a Secretary of State under this section shall be final.

Additions to asylums for private patients.

255. The visiting committee of an asylum, with the consent of each local authority by whom the asylum is provided, and with the approval in writing of a Secretary of State, may make such alterations in or additions to the asylum either by way of detached buildings or blocks of buildings or otherwise as they think fit for the purpose of providing accommodation for private lunatics.

Contracts.

256.—(1.) Every person entering into a contract with a visiting committee shall give sufficient security for due performance of the contract.

(2.) Every such contract and all orders relating thereto shall be entered in a book to be kept by the clerk of the visiting committee, and when the contract is completed the book shall be deposited and kept among the records of the local authority, or, when more than one local authority is interested, then among the records of the local authority which contributes the largest proportion of the expenses of the contract.

(3.) Every such book may be inspected at all reasonable times by any person contributing to the rates of the local authority interested in the contract.

(*l*) The words in brackets are inserted into this sub-section by s. 16 of the Lunacy Act, 1891, *post*.

(4.) A copy of every such book shall be kept at the asylum to which the contract relates. Sect. 256 (4).

257.—A district asylum shall not be enlarged or improved without the consent of all the parties to the agreement under which the same is provided. Enlargement of district asylum.

258.—(1.) The visiting committee of an asylum, with the consent of the local authority by whom they are appointed and of a Secretary of State, may provide for the burial of lunatics dying in the asylum, and of the officers and servants belonging thereto— Burial grounds.

(a.) By appropriating any land already belonging to them or acquiring any land, not exceeding in either case two acres, for enlarging an existing burial ground, or for providing a new burial ground;

(b.) By agreeing with any corporation or persons or body of persons willing to provide for the burial of such lunatics and other persons as aforesaid.

(2.) The committee may procure the consecration of a new or enlarged burial ground, and in the case of a new burial ground, may provide for the appointment of a chaplain therein.

(3.) The incumbent of the parish in which a new or enlarged burial ground provided by a visiting committee is situate, shall not be entitled to any fee for the interment of any person buried therein by direction of the committee.

259. Where a visiting committee undertakes the burial of any pauper lunatic, and the public burial ground of the parish where the death took place is closed or inconveniently crowded, the burial may take place in a public burial ground of some other parish, with the consent of the minister and churchwardens of that parish; and in that case the visiting committee shall pay to the person entitled thereto the burial fees payable under any Act or according to the custom of the place of burial. Burial of lunatics.

260. For the purpose of the purchase of lands by visiting committees the Lands Clauses Acts are hereby incorporated with this Act, except the provisions relating to the purchase of land otherwise than by agreement (*m*), the sale of superfluous lands, the recovery of forfeitures, penalties, and costs and access to the special Act, and the expression "promoters of the undertaking" wherever used in the Lands Clauses Acts shall mean a visiting committee, and the expression "special Act" shall mean this Act. Incorporation of Lands Clauses Acts.

261.—(1.) A visiting committee, instead of purchasing any land or buildings which they are authorised to purchase, may take a lease thereof for any term not less than sixty years at such rent and subject to such covenants as the committee think fit. Power to take land on lease.

(*m*) As to the compulsory purchase of lands, see s. 238, sub-s. (4), *ante*, p. 452.

Sect. 261 (2).

(2.) A visiting committee, with the sanction of each local authority for whom they are authorized to act, may hire or take on lease from year to year, or for any term of years, at such rent and subject to such covenants as they think fit, any land or buildings for the employment of the patients in the asylum, or for the temporary accommodation of any pauper lunatics for whom the accommodation in the asylum is inadequate.

(3.) Lands and buildings hired or taken on lease under this section shall be deemed part of the asylum, and be subject to all existing provisions as to the asylum.

Situation of asylum.

262. The asylum to be provided by any local authority either solely or jointly, may be situate without the limits of the administrative area of the local authority, and if the asylum or any part thereof is so situate, the council and justices of the county, county borough, or borough to which the asylum wholly or in part belongs shall have full power and authority to act in the county or borough in which the asylum is situate, so far as concerns the regulation of the asylum and the powers conferred by this Act, as if the asylum were situate within the proper jurisdiction of such council and justices.

Rating of asylums.

263. Lands and buildings already or to be hereafter purchased or acquired for the purposes of any asylum, and any additional building erected or to be erected thereon, shall, while used for those purposes, be assessed to county, parochial, district and other rates made after the commencement of this Act on the same basis and to the same extent as other lands and buildings in the same parish, township, or district (*n*).

How lands to be conveyed.

264. Any lands acquired for the purposes of this Act may be conveyed to the local authority being a county council, or in cases where the local authority is the council of a borough to the municipal corporation of the borough, or, where more than one local authority is interested, to the local authorities interested as joint tenants.

Power to retain land unsuitable or not required for asylum purposes.

265. Any lands or buildings which have been used for the purposes of an asylum, and have been found unsuitable, or are otherwise not required for such purposes, may, with the consent of a Secretary of State, and subject to such conditions as he thinks fit to impose, be retained by the local authority, and appropriated for

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(*n*) This alters the previous law as enacted by 16 & 17 Vict. c. 97, s. 35. In rating the asylum lands, the profit, if any, on the sale of produce, must be taken into account. *R.* v. *Fulbourn* (*Overseers of*), 6 B. & S. 451 ; 34 L. J. M. C. 106 ; 12 L. T. (N.S.) 444 ; 13 W. R. 713. The rates are chargeable to the maintenance account, not to the building and repairs account. *R.* v. *Dolby*, [1892] 2 Q. B. 301 ; 61 L. J. Q. B. 809 ; 67 L. T. (N.S.) 296 ; 56 J. P. 599.

Such parts of an asylum as are occupied by officers having an income of more than 160*l.* are assessable to income tax under Schedule A. *Bray* v. *Lancashire JJ.*, 22 Q. B. D. 484 ; 58 L. J. M. C. 54 ; 37 W. R. 392 ; 53 J. P. 499.

any purposes for which the local authority is empowered to acquire land. Sect. 265.

Repairs, alterations, improvements.

266.—(1.) The visiting committee of an asylum may, of their own authority, order all necessary and ordinary repairs. They may also, of their own authority, order all necessary and proper additions, alterations, and improvements which the asylum may require, to an amount not exceeding four hundred pounds in any one year.

(2.) An order for repairs, additions, alterations, or improvements to an amount exceeding one hundred pounds shall not be given, unless the order is approved and signed by at least three visitors at a meeting of the visiting committee duly summoned upon notice that the proposed expenditure is to be considered thereat.

(3.) Any expenditure incurred, except for repairs, shall be reported by the visiting committee to the local authority on whose behalf the expenditure was incurred.

(4.) In the case of a district asylum, the visiting committee shall apportion expenses incurred under this section in the proportion in which each local authority has contributed to the erection of the asylum, or where any other proportion is fixed by an agreement to unite then in the proportion so fixed; and where any such agreement only provides in what proportion the expense of repairs shall be borne, the expense of additions, alterations, and improvements shall be borne in the same proportion.

(5.) The visiting committee shall make an order for payment of the expenses incurred under this section upon the treasurer of the local authority, or, in the case of a district asylum, shall make an order upon the treasurer of each local authority concerned for payment of the expenses apportioned to that local authority, and the treasurer upon whom the order is made shall pay the amount mentioned in the order out of the county or borough fund.

Dissolution of Agreement to unite.

Power to dissolve a union.

267.—(1.) A visiting committee, with the consent of a Secretary of State, may by a resolution passed by a majority of the whole number of the members of the committee at a meeting summoned upon notice that the resolution is to be proposed thereat dissolve an agreement to unite.

(2.) Every local authority interested under an agreement to unite shall, before a dissolution of the agreement takes effect, elect a committee to provide asylum accommodation in accordance with the provisions of this Act.

(3.) In case an agreement to unite is dissolved between any local authority not having an asylum and a local authority which has an asylum and is in receipt of an annual fixed payment as remuneration for any expenses incurred for the benefit of the local authority making the payment, such last-mentioned local authority may raise

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(4.) Upon the dissolution of an agreement to unite the visiting committee may divide the real and personal property held for the purposes of the agreement among the several local authorities, between whom the agreement existed, in the proportion in which they contributed thereto or are interested therein, or in such proportions as the visiting committee, with the consent of a Secretary of State, think fit. And a sum of money of such amount, and to be raised by any of the local authorities parties to the agreement in such proportions as the committee, with the consent of a Secretary of State, approve, may be awarded to any local authority instead of a share or part of a share in such property.

(5.) Any money to be raised under this section may be raised in the same manner and by the same means as other moneys appointed to be raised for the purposes of this Part of this Act (*o*).

Cancellation of Contracts.

Power to cancel contract.

268.—(1.) Where any lands contracted to be purchased or taken in exchange by a visiting committee are found unsuitable, or are not required, the committee, or any committee appointed in their place, may, with the consent of a Secretary of State, and upon payment of such sum, if any, as a Secretary of State approves, procure a release from the contract and execute a release to the other contracting party.

(2.) The consideration, if any, for such release, and all expenses in relation to the contract and release, shall be raised in the same manner as if the same were payable in respect of the purchase money of lands for the purposes aforesaid.

Admission of Pauper Lunatics from other Counties or Boroughs.

Power to contract for reception of lunatics.

269.—(1.) A visiting committee (*p*) (in this section called the contracting committee) may contract with the manager of a licensed house, or subject as in this section provided with any other visiting committee (in this section called the receiving committee), for the reception into that house, or into the asylum of the receiving committee, of all or any of the pauper lunatics of the local authority for which the contracting committee is acting, or for the use and occupation of the whole or any part of the house, upon such terms as may be agreed.

(*o*) See s. 274, *post*.

(*p*) It does not appear to be competent to the visiting committee of a district asylum appointed under an agreement to unite for the purposes of the district asylum only (see s. 169 (2), *ante*, p. 448) to exercise the power of making reception contracts for boarding out surplus lunatics under this section. These must be made by the visiting committee of the county to which the patients proposed to be boarded out belong.

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(2.) Where a contract between a visiting committee and the subscribers to a hospital for the reception of pauper patients into the hospital was subsisting on the twenty-sixth of August one thousand eight hundred and eighty-nine, such contract shall continue in force, and on its expiration a new contract may be entered into with such subscribers subject to the provisions of this section (*q*).

(3.) A contract between a visiting committee and any other visiting committee or the manager of a licensed house or the subscribers to a hospital for the reception of the lunatics of the local authority for which the contracting committee is acting (hereinafter called a reception contract) shall not be made for more than five years, but such contract may be renewed subject to the provisions of this section.

(4.) Where a reception contract has been made, whether before or after the passing of this Act, on behalf of a borough with the visiting committee of an asylum, and the contract is determinable by the parties thereto, or either of them, the contract shall not be determined without the consent of a Secretary of State.

(5.) A reception contract shall not be carried into effect until approved by a Secretary of State, and any reception contract may be determined by a Secretary of State.

(6.) A reception contract with the manager of a licensed house shall determine if the house ceases to be licensed.

(7.) A reception contract shall not exempt the local authority for which the contracting committee is acting from the requirements of this Act as regards asylum accommodation if a Secretary of State determines the contract, although the term for which the contract was entered into has not expired.

(8.) Except as in this section provided a visiting committee shall not after the commencement of this Act enter into a reception contract with subscribers to a hospital.

(9.) Where a reception contract has been made by a visiting committee, the local authority for whom the visiting committee acts shall, while the contract subsists, defray out of the county or borough fund so much of the weekly charge agreed upon for each pauper lunatic as in the opinion of the visiting committee represents the sum due for the accommodation, not exceeding one-fourth of the entire weekly charge, in exoneration to that extent of the union to which the maintenance of any such pauper lunatic is chargeable.

(10.) Where a reception contract has been entered into by the visiting committee of an asylum with the subscribers to a hospital or the manager of a licensed house, the hospital or house may be

(*q*) Subsisting contracts between the council of a borough and the subscribers to a hospital are put in the same position by s. 17 of the Lunacy Act, 1891, *post*.

Sect. 269 (10). visited by any members for the time being of the committee of the asylum.

Cases where asylum is more than sufficient for pauper lunatics.

270.—(1.) Where it appears to the visiting committee of an asylum that the asylum is more than sufficient for the pauper lunatics who for the time being can be lawfully received, the committee may by resolution permit any other pauper lunatics to be received into the asylum.

(2.) A resolution under this section may require that no pauper lunatic be admitted thereunder without an undertaking by the minute of the guardians of the union to which the lunatic is chargeable for the payment of the expenses of maintenance of the lunatic, and of his burial if he dies in the asylum, as well as for his removal within six days after notice from the manager of the asylum.

(3.) A resolution under this section may be rescinded or varied.

Admission of Private Patients.

Provisions as to private patients in asylums.

271.—(1.) Private patients may be received into any asylum upon such terms as to payment and accommodation as the visiting committee think fit. All enactments as to the conditions on which such lunatics may be received into hospitals or licensed houses shall be applicable to private patients received into such asylums.

(2.) An account of the amount, by which the sums charged for private patients received in the asylum exceed the weekly charges for pauper lunatics sent from or settled in any place, parish, or borough which has contributed to provide the asylum, shall be made up to the last day of each year, and the surplus, if any, after carrying to the building and repair funds such sums, and providing for such outgoings and expenses as the visiting committee consider proper, shall be paid to the treasurer of the local authority to which the asylum belongs, or in the case of an asylum belonging to several local authorities, to their respective treasurers in the proportions in which such local authorities or the justices of the counties and boroughs whose powers have been transferred to them have contributed to the asylum, and shall be applied as part of the county or borough fund.

Approval of Secretary of State.

Mode of obtaining approval of Secretary of State.

272. For the purpose of procuring the approval of a Secretary of State to any agreement, contract, or plan requiring approval under this Act, the agreement, contract, or plan, with an estimate of the probable cost of carrying it into effect, shall be submitted to the Commissioners, and to the Secretary of State, and the Commissioners shall make such inquiries as they think fit, and shall report thereon to the Secretary of State, who may approve the agreement, contract, or plan, with or without modification, or may refuse his approval.

Provisions for raising Expenses. Sect. 273.

273. The expenses to be paid and contributed by a local authority for the purposes of this Act shall be paid by the treasurer of the local authority out of the county or borough fund as the case may be to the treasurer of the asylum to which such local authority either alone or jointly pays or contributes.

Borrowing Powers.

Power to borrow.

274.—(1.) For the purpose of paying any money payable under this Act, or for repaying any moneys borrowed under this Act or any former Act, authorising borrowing for purposes of asylum accommodation, the local authority may with the consent of the Local Government Board, and subject to the provisions of the Local Government Act, 1888 (*r*), and the Municipal Corporations Act, 1882, according as the same respectively are applicable to the local authority, borrow on the security of the county or borough fund, and of any revenue of the local authority, or on either such fund or revenues or on any part of the revenues, such money as the local authority requires. 51 & 52 Vict. c. 41. 45 & 46 Vict. c. 50.

(2.) The Public Works Loan Commissioners may, if they see fit, make any loan for the purposes of this Act to the local authority upon the security of any fund or revenues applicable to the purposes of this Act.

Rules and Regulations.

General rules and regulations to be framed.

275.—(1.) The visiting committee of an asylum shall within twelve months after the completion of the asylum prepare and submit to a Secretary of State general rules for the government of the asylum, and such rules when approved by a Secretary of State shall be printed and observed.

(2.) The general rules of every asylum may be altered and varied with the approval of a Secretary of State.

(3.) The visiting committee shall also make regulations (not inconsistent with the general rules) setting forth the number and description of officers and servants and their respective duties and salaries.

(4.) The regulations may provide that any number of beds in such part of the asylum as the committee think fit shall be reserved for the cases specified in the regulations, and in that case the asylum shall for the purposes of this Act, as respects the admission of cases not within the class for which beds are reserved, be deemed full when there are no vacant beds except those so reserved, but the committee may, if they think fit, fill any reserved beds.

(5.) The regulations may also provide for the exclusion of any persons afflicted with any malady which the visiting committee

(*r*) See s. 69 of that Act, *ante*, p. 132.

Sect. 275 (5). deem contagious or infectious or coming from a place in which such a malady may be prevalent, and for the absence for a period not exceeding four days of a patient from the asylum by permission of the manager.

(6.) The committee shall also determine the diet of the patients.

Officers of Asylums.

Officers of asylums.

276.—(1.) The visiting committee of every asylum shall appoint:—

(a.) A chaplain, who shall be in priest's orders, and shall be licensed by the bishop of the diocese;

(b.) A medical officer, who shall reside in the asylum and shall not be the clerk or treasurer of the asylum;

(c.) A superintendent of the asylum, or, if there is more than one division, a superintendent of each division of the asylum, who shall be the resident medical officer or one of the resident medical officers of the asylum, or of the division of which he is appointed superintendent, unless a Secretary of State authorise the committee to appoint some other person than a medical officer to be superintendent;

(d.) A clerk;

(e.) A treasurer;

(f.) Such other officers and servants as they think fit.

(2.) The visiting committee may appoint a minister of any religious persuasion to attend patients of the religious persuasion to which the minister belongs.

(3.) The committee may remove any person appointed under this section, and if the office of chaplain, medical officer, superintendent, clerk, or treasurer becomes vacant, the committee shall appoint a person to fill the vacancy subject to the restrictions affecting the original appointment, and they may in their discretion fill any vacancies among other officers and servants of the asylum.

(4.) The committee may also appoint a visiting physician or surgeon to the asylum.

(5.) The salaries, wages, and remuneration of every person appointed under this section shall be fixed by the committee.

277.—(1.) The licence of the chaplain of an asylum shall be revocable by the bishop.

The chaplain.

(2.) The chaplain, or his substitute approved by the committee, shall perform in the chapel of the asylum, or in some other convenient place belonging to the asylum, divine service according to the rites of the Church of England on every Sunday, Christmas-day, and Good-Friday. He shall also perform divine service, and such other services according to the rites of the Church of England as the committee direct, at such times as they appoint.

(3.) If a patient is of a religious persuasion differing from that of the established Church, a minister of his persuasion, at the

request of the patient or his friends, may, with the consent of the medical officer and under such regulations as he approves, visit the patient. Sect. 277 (3).

278.—(1.) The clerk of the asylum shall keep all books and documents which the visiting committee are required to keep or direct to be kept. Books and accounts.

(2.) He shall also keep an account of the receipts and expenditure on account of the asylum.

(3.) Before the thirtieth day of September in each year, or such other date as the Local Government Board appoint, he shall send an abstract of the account for the previous year, ending on the thirty-first day of March, or such other date as the Local Government Board appoint, to the Local Government Board, and to the Commissioners.

(4.) The abstract shall contain such particulars and be in such form as the Local Government Board direct.

(5.) Within one month from the receipt of the abstract a copy thereof shall be laid before both Houses of Parliament, if Parliament is then sitting, and if not, within one month from the commencement of the next session.

(6.) The treasurer and every officer of an asylum who receives or expends money or goods on account of the asylum shall keep accounts of his receipts and expenditure.

(7.) This section shall not affect any order made by the Local Government Board before the commencement of this Act.

279. * * * * *(s).

Pensions.

280.—(1.) The visiting committee may grant to any superintendent, chaplain, matron, or other officer or servant of the asylum, who is incapacitated by confirmed illness, age, or infirmity, or who has been an officer or servant in the asylum for not less than fifteen years and is not less than fifty years old, such superannuation allowance as the committee think fit (*t*). Pensions of officers.

(2.) Where the offices of superintendent and matron are held by man and wife, and a superannuation allowance has been granted to the superintendent, the committee may, if the matron has been an officer of the asylum for not less than twenty years, grant her such

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(*s*) Section 279 (as to accounts of county asylums) is repealed by the Lunacy Act, 1891, *post* ; s. 18 of that Act being substituted.

(*t*) It was held in *R.* v. *Hereford County Council*, 63 L. T. (N.S.) 245 ; 38 W. R. 775 ; 55 J. P. 72, that it was not necessary for the purpose of receiving a superannuation allowance, that the chaplain should reside in the asylum or give his whole time to the duties of his office therein ; that there was no distinction between an officer of and an officer in the asylum ; and that as the chaplain performed his duties in the asylum, he was an officer in the asylum, and therefore entitled to a superannuation allowance if the visitors in their discretion granted it.

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superannuation allowance as they think fit, although she is not incapacitated by illness, age, or infirmity: Provided that, if any such matron is appointed to a public office or to any office under this Act in respect of which she receives a salary, her superannuation allowance shall, so long as she receives such salary, be suspended or diminished by the amount of the salary according as the salary is or is not greater than the allowance.

(3.) A superannuation allowance shall not exceed two-thirds of the salary paid to the superannuated person at the date of superannuation and such further sum (if any) as the visitors think fit to grant, having regard to the value of the lodgings, rations, and other allowances enjoyed by the superannuated person.

Mode in which pension to be granted.

281.—(1.) A superannuation allowance shall not be granted unless seven clear days' notice of the meeting at which the same is to be granted, and of the intention to determine thereat the question of such grant, has been given, nor unless three visitors concur in and sign the order granting the same.

(2.) A superannuation allowance granted under this Act shall be paid out of the county or borough fund as the case may be.

(3.) A superannuation allowance payable out of the county fund shall not be paid until the grant thereof has been confirmed by the county council.

Service in several asylums of the same local authority.

282. When any officer is transferred from one asylum to another, wholly or in part belonging to the same local authority, his service in all such asylums shall be counted for the purpose of computing his pension, superannuation allowance, or gratuity for length of service, as if all such asylums had constituted only one asylum.

PART X.

Expenses of Pauper Lunatics.

Weekly Expenses.

Weekly sum to be fixed.

283.—(1.) Every visiting committee shall fix a weekly sum, not exceeding fourteen shillings, for the expenses of maintenance and other expenses of each pauper lunatic in the asylum, and of such amount that the total of such weekly sum shall be sufficient to defray such expenses and also the salaries of the officers and attendants of the asylum, and such weekly sum may from time to time be altered (*u*).

(2.) If fourteen shillings a week is found insufficient for the purposes aforesaid, the local authority to whom the asylum belongs may by order direct such addition to be made to the weekly sum

(*u*) Where the visiting committee had in their hands a sum of money, being the excess of receipts over the cost of maintaining lunatics in the asylum, it was held that the guardians of the several unions had no claim to the funds, but that as between the committee and the county council, the latter were entitled. *Proctor* v. *Cheshire County Council*, 56 J. P. 532.

as to the local authority seems necessary, and every such order shall be signed by the clerk of the local authority, and forthwith published in a local newspaper. Sect. 283 (2).

(3.) A committee may fix a greater weekly sum not exceeding fourteen shillings, to be charged in respect of pauper lunatics other than those sent from or settled in a parish or place within the county or borough to which the asylum belongs.

(4.) Any excess created by the payment of such greater weekly sum may, if the visiting committee think fit, be paid over to a building and repair fund, to be applied by the committee to the altering, repairing, or improving the asylum, and the committee shall annually submit to the local authority a detailed statement of the manner in which such fund has been expended (*u*).

Uniform charge where more than one asylum.

284. Where there is more than one asylum under the management and control of a visiting committee, the committee may, subject to any direction given by the local authority, provide that a uniform charge shall be made for the maintenance of lunatics in the several asylums, and that for that purpose any surplus arising on the accounts of one asylum shall be applied to meet the deficit arising on the accounts of another asylum.

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Liability for Expenses of Maintenance.

Chargeability of pauper lunatic.

286.—(1.) Where a pauper lunatic is sent to an institution for lunatics, or where a lunatic in an institution for lunatics becomes a pauper, he shall be deemed to be chargeable to the union from which he was sent, until it has been established, as by this Act provided, that the lunatic is settled in some other union, or that it cannot be ascertained in what union the lunatic was settled, and the manager of the institution shall forthwith give to the authority liable for his maintenance notice that the lunatic has become destitute.

(2.) Every pauper lunatic who is chargeable to a union shall, while he resides in an institution for lunatics, be deemed for the purposes of his settlement to be resident in the union to which he is chargeable.

Orders for maintenance of lunatics.

287.—(1.) The justice by whom any pauper lunatic is sent to any institution for lunatics under this Act, or any two justices of the county or borough in which the institution for lunatics where any pauper lunatic is confined is situate, or from any part of which any pauper lunatic has been sent, or any two justices, being visitors of such institution, may make an order upon the guardians of the union to which the lunatic is chargeable, for payment to the treasurer, or manager of the institution, of the reasonable charges of the lodging, maintenance, medicine, clothing, and care (in this Act referred to as the expenses of maintenance) of such lunatic (*x*).

(*x*) An application for an order under this section may be made *ex parte*. *R.* v. *Bruce*, [1892] 2 Q. B. 136 ; 40 W. R. 686 ; 56 J. P. 567.

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(2.) Any such order may be retrospective or prospective, or partly retrospective and partly prospective.

(3.) An order under this section shall not be subject to appeal (*y*).

Inquiry into settlement.

288. Any two justices for the county or borough in which an institution for lunatics where a pauper lunatic is or has been confined is situate, or to which such institution being an asylum wholly or in part belongs, or from any part of which any pauper lunatic is or has been sent for confinement, may, at any time, inquire into the settlement of the pauper lunatic (*z*).

Adjudication as to settlement.

289. If satisfactory evidence can be obtained as to such settlement in any union, such justices shall, by order, adjudge the settlement, and order the guardians of the union to pay to the guardians of any other union the expenses incurred in or about the examination of the lunatic and the bringing him before a justice or justices, and his removal and conveyance to or from any institution for lunatics (in this Act referred to as the incidental expenses), and all moneys paid by such last-mentioned guardians to the treasurer or manager of the institution for the expenses of maintenance of the lunatic, and incurred within twelve months previous to the date of such order, and, if the lunatic is still in confinement, also to pay to the treasurer or manager of the institution the reasonable expenses of the future maintenance of such lunatic (*a*).

If settlement cannot be ascertained a pauper lunatic may be made chargeable to a borough or county.

290.—(1.) If a pauper lunatic is not settled in the union from which he was sent to an institution for lunatics, and his settlement cannot be ascertained (*b*), and the lunatic was sent from a quarter sessions borough which is free from contributing to the payment of the expenses of pauper lunatics chargeable to the county in which the borough is situate, or from a place not in such a borough, then the relieving officer of the union shall give to the clerk of the local authority within whose area the lunatic is found, ten days' notice to appear before two justices having jurisdiction within such area, at a time and place to be appointed in the notice.

(2.) Upon the appearance of the clerk of the local authority, in person or by deputy, or in case of non-appearance upon proof of due

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(*y*) An order under this section is ministerial only, and where a claim is made under such an order, the court can go behind it, and inquire whether it was properly made. *Suffolk County Lunatic Asylum* v. *Stow Union*, 76 L. T. (N.S.) 494 ; 45 W. R. 620 ; 61 J. P. 328.

(*z*) The inquiry may be made at any time, even after the discharge or death of the lunatic. See *R.* v. *Manchester* (*Guardians of*), 6 E. & B. 919 ; 26 L. J. M. C. 1 ; 28 L.T. (N.S.) 369 ; 20 J.P. 726 ; *Hunslet* v. *Dewsbury*, 26 L. J. M. C. 3 ; 28 L. T. (N.S.) 99. A second order may be made where there has been a change of settlement. *West Derby Union* (*Guardians of*) v. *Liverpool Select Vestry*, 46 J. P. 372.

(*a*) This order may be made *ex parte*. See *R.* v. *Bruce*, *ante*, p. 467.

(*b*) This applies where the lunatic was born in Scotland or Ireland, and has not acquired a settlement in England. *Somersetshire* (*Clerk of the Peace for*) v. *Shipham* (*Overseers of*), 3 B. & S. 507 ; 32 L. J. M. C. 83 ; 7 L. T. (N.S.) 673 ; 27 J. P. 437.

service of the notice, any two or more such justices may inquire into the circumstances of the case, and adjudge the pauper lunatic to be chargeable to the local authority, and may order the treasurer of the local authority to pay to the guardians of any union the incidental expenses of the lunatic, and all moneys paid by such guardians to the treasurer or manager of the institution for lunatics for the expenses of maintenance of the lunatic, and incurred within twelve months previous to the date of the order, and if the lunatic is still in confinement, to pay to such treasurer or manager the expenses of the future maintenance of the lunatic. Sect. 290 (2).

(3.) Such justices may direct such further inquiries as they think fit to ascertain the union in which any pauper lunatic is settled, and delay their adjudication until after such further inquiries.

(4.) Every local authority to whom a pauper lunatic is adjudged to be chargeable may at any time thereafter inquire as to the union in which the lunatic is settled, and may procure him to be adjudged to be settled in any union (*c*).

Provision for reimbursement of expenses of a lunatic afterwards adjudged to be settled in a union.

291. If after a pauper lunatic has been sent to an institution for lunatics, and has been adjudged chargeable to a local authority, the local authority procure the lunatic to be adjudged to be settled in a union, any two justices of the county or borough in which the institution where the lunatic is confined is situate, or from any part of which the lunatic was sent for confinement, or any two justices, being visitors of the institution, may make an order upon the guardians of the union for payment to the treasurer of the local authority of all expenses of maintenance of the lunatic paid by such treasurer to the treasurer or manager of the institution, and incurred within twelve months previous to the order, and, if the lunatic is still in confinement, also for payment to such treasurer or manager of the expenses of the future maintenance of the lunatic.

Orders as to lunatic paupers.

292.—(1.) Justices by this Act authorised to make orders for payment of expenses upon guardians of unions, may make such orders, although the union is not within the jurisdiction of the justices.

(2.) Orders as to the settlement or chargeability of pauper lunatics and for payment of expenses may be obtained by the guardians of any union.

Order for maintenance to extend to any place where the lunatic is.

293. An order for payment of the future expenses of maintenance of a lunatic shall extend to the payment of such expenses to the treasurer or manager of any institution for lunatics to which he is removed or in which he is for the time being confined.

The costs of pauper lunatics who are irremovable.

294. All incidental expenses and expenses of maintenance of a lunatic removed to an institution for lunatics who would at the time of his removal have been exempt from removal to the parish of his

(*c*) See *All Saints (Poplar)* v. *Middlesex (Clerk of the Peace of)*, 2 E. & E. 829; 29 L. J. M. C. 186; 2 L. T. (N.S.) 215; 24 J. P. 661.

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settlement or the country of his birth by reason of some provision of the Poor Removal Act, 1846, as amended by subsequent Acts, shall be paid by the guardians of the union wherein the lunatic has acquired such exemption, and no order shall be made in respect of such lunatic under any provision contained in this or any other Act upon the guardians of the union in which the lunatic is settled while the above-mentioned expenses are to be paid and charged as herein provided (*d*).

Charges may be paid without orders of justices.

295. The guardians upon whom an order might be made under this Act for the payment of any money may pay the same without an order, and may charge the same to such account as they could have done if an order had been made.

The liability of relations of pauper not to be affected.

296. The liability of any relation or person to maintain any lunatic shall not be taken away or affected, where such lunatic is sent to or confined in any institution for lunatics, by any provision herein contained concerning the maintenance of such lunatic.

Expenses of removal, discharge, and burial.

297. The necessary expenses attending the removal, discharge, or burial of a pauper lunatic in any institution for lunatics, shall be borne by the union to which the lunatic is chargeable, or the local authority liable for his maintenance, and shall be paid by the guardians of the union or by the treasurer of the local authority.

Provisions of Act as to expenses to extend to pauper lunatics sent to asylums under any other Act.

298. The provisions of this Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to persons confined as pauper lunatics sent to any institution for lunatics under any other Act authorizing their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have any real or personal property applicable to his maintenance) with respect to all other lunatics sent to any institution for lunatics under any order of a justice or justices made before the commencement of this Act, or under a summary reception order made by a justice under this Act, or under an order made by two or more commissioners before or after the commencement of this Act, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the union from which they are sent.

Application of Lunatic's Property.

Power to recover expenses against lunatic's estate.

299.—(1.) If it appears to any justice that a lunatic, chargeable to any union, or local authority, has any real or personal property more than sufficient to maintain his family, if any, such justice may by order direct a relieving officer of the union, or the treasurer or some other officer of the local authority, to seize so much of any money,

(*d*) It is beyond the scope of the present work to enter into details of the law relating to the removability of paupers, but as bearing directly on the operation of the above section, reference may be made to *R.* v. *Whitby Union*, L. R. 5 Q. B. 325 ; 39 L. J. M. C. 97 ; 22 L. T. (N.S.) 336 ; 34 J. P. 725 ; *R.* v. *Bruce*, *ante*, p. 467 ; *Hendon* v. *Hampstead*, 62 L. J. M. C. 170.

and to seize and sell so much of any other personal property of the lunatic, and to receive so much of the rents of any land of the lunatic as the justice may think sufficient to pay the expenses of maintenance and incidental expenses respectively incurred or to be incurred in relation to the lunatic (*e*). Sect. 299 (1).

(2.) If any trustee, or the Bank, or any other society or person having possession of any property of a lunatic, shall pay or deliver to a relieving officer of a union, or to the treasurer or other officer of the local authority to which respectively a lunatic is chargeable, any money or other property of the lunatic, to repay the charges in this section mentioned, whether pursuant to an order under this section, or without an order, the receipt of such relieving officer, treasurer, or officer shall be a good discharge (*f*).

300. An order may be made by a judge of county courts upon an application by the guardians of any union for payment of the expenses incurred by them under this Act in relation to a lunatic, and such order may be enforced against any property of the lunatic in the same way as a judgment of the county court. Order by county court judge.

Appeals.

301.—(1.) Any person aggrieved by the refusal of an order by any justice or justices as to any matter within the jurisdiction of a justice or justices under this Part of this Act, may appeal to a court of quarter sessions upon giving to the justice or justices against whom the appeal is made fourteen clear days' notice of appeal. Persons aggrieved by refusal of an order may appeal to the sessions.

(2.) The determination of the court upon the appeal shall be final.

302. The guardians of any union, and the clerk of a local authority, obtaining any order under this Act adjudging the settlement of any lunatic to be in any union, shall, within a reasonable time after the date of the order, send or deliver, by post or otherwise, to the guardians of the union in which the lunatic is adjudged to be settled, a copy of the order, and also a statement in writing under the hand of the clerk to the guardians, or under the hand of the clerk of the local authority, as the case may be, stating the description and address of the guardians or clerk obtaining the order, and the place of confinement of the lunatic, and setting forth the grounds of the adjudication, including the particulars of any settlement relied upon in support thereof; and on the hearing of any appeal against the Party obtaining order of adjudication to send copy thereof and statement of grounds.

(*e*) This applies to the case of a lunatic chargeable to a county under s. 290.

(*f*) This sub-section merely enables trustees and others to pay or hand over the property. See *Re Newbegin*, 36 Ch. D. 477; 56 L. J. Ch. 907; 57 L. T. (N.S.) 390; 36 W. R. 69. Whether the justice's order can be enforced at all is not clear, but at all events an injunction will be granted to restrain its being enforced when a receiver in lunacy has been appointed. *Winkle* v. *Bailey*, [1897] 1 Ch. 123; 66 L. J. Ch. 181; 75 L. T. (N.S.) 577; 61 J. P. 135.

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order the respondents shall not give evidence of any other grounds in support of the order than those set forth in such statement (*g*).

Appeal against order of adjudication.

303. If the guardians of any union feel aggrieved by any order adjudging the settlement of a lunatic, they may appeal to the quarter sessions for the county or borough on behalf of which the order has been obtained, or in which the union obtaining the order is situate, or, in case such union extends into several counties, then to the next quarter sessions for the county or borough in which the institution for lunatics where the lunatic is or has been confined is situate, and such sessions, upon hearing the appeal, shall have full power finally to determine the matter.

Copy of depositions to be furnished on application.

304.—(1.) The clerk to the justices making an order adjudging the settlement of a lunatic, or the clerk of the peace in the case hereinafter provided for, shall keep the depositions upon which the order was made, and shall, within seven days after application by any party authorised to appeal against the order, furnish a copy of the depositions to the applicant.

(2.) The person applying for a copy of the depositions shall pay for the same at the rate of twopence for every folio of seventy-two words.

(3.) No omission or delay in furnishing a copy of the depositions shall be a ground of appeal against the order.

(4.) On the trial of any appeal no such order shall be quashed or set aside either wholly or in part on the ground that the depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to the order or grounds on which the same was made.

(5.) If the justices who make any such order have no clerk, they shall send or deliver the depositions to the clerk of the peace of the county or borough to the quarter sessions whereof the appeal lies, and the party obtaining such order shall, in the statement of the grounds of adjudication, state that the justices have no clerk.

No appeal if notice not given within a certain time.

305. No appeal shall be allowed against any such order if notice in writing of the appeal is not sent or delivered by post or otherwise to the party on whose application the order was obtained within twenty-one days after the sending or delivery, as hereinbefore directed, of a copy of the order, and such statement as hereinbefore mentioned, unless within the twenty-one days a copy of the depositions has been applied for by the party intending to appeal, in which case a further period of fourteen days after the sending of such copy shall be allowed for giving notice of appeal.

Grounds of appeal to be stated.

306. In every case where notice of appeal against such order is given the appellant shall, with the notice, or fourteen days at least

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(*g*) As to the amendment of the grounds of appeals, see s. 307, *post*, and *R.* v. *Manchester* (*Guardians of*) 6 E. & B. 919 ; 26 L. J. M. C. 1 ; 28 L. T. (N.S.) 820 ; 2 J. P. 726.

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before the first day of the sessions at which the appeal is to be tried, send or deliver by post or otherwise to the respondent a statement in writing under his hand, or where the appellants are the guardians of a union, under the hand of the clerk to the guardians, of the grounds of such appeal; and the appellant shall not, on the hearing of any appeal, give evidence of any other grounds of appeal than those set forth in such statement.

As to the sufficiency of statement of grounds of adjudication or appeal.

307.—(1.) Upon the hearing of any appeal against any such order no objection whatever on account of any defect in the form of setting forth any ground of adjudication or appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of any such ground alleged to be set forth in any such statement shall prevail, unless the court is of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial.

(2.) In all cases where the court is of opinion that any such objection to such statement or to the reception of evidence ought to prevail, the court may, if it thinks fit, cause any such statement to be forthwith amended by some officer of the court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement, as to the court appears just.

Power for court to amend order on account of omission or mistake.

308.—(1.) If, upon the trial of any appeal against any such order, or upon the return to a writ of certiorari, any objection is made on account of any omission or mistake in drawing up the order, and it is shown to the satisfaction of the court that sufficient grounds were proved before the justices making the order to authorise the drawing up thereof free from the omission or mistake, the court may, upon such terms as to payment of costs as it thinks fit, amend the order and give judgment as if no omission or mistake had existed (*h*).

(2.) No objection on account of any omission or mistake in any such order brought up upon a return to a writ of certiorari shall be allowed, unless the omission or mistake has been specified in the rule for issuing such writ of certiorari.

Power of court as to costs

309.—(1.) Upon every such appeal the court before whom the same is brought may, if it thinks fit, order the party against whom the same is decided to pay to the other such costs and charges as may to the court appear just, and shall certify the amount thereof.

(2.) If either of the parties to the appeal have included in the statement of grounds of adjudication or of appeal sent to the opposite party any grounds in support of the order or of appeal which, in the opinion of the court determining the appeal, are

(*h*) An amendment cannot be made so as to affect new parties not before the court. *R.* v. *Liverpool*, 29 L. J. M. C. 137 ; 2 L. T. (N.S.) 173 ; 24 J. P. 646.

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frivolous and vexatious, such party shall be liable, at the discretion of the court, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds.

Decision upon appeal to be final.

310. The decision of the court upon the hearing of any appeal against any such order, as well upon the sufficiency and effect of the statement of the grounds in support of the order and appeal, and of the copy or duplicate of the order sent to the appellant, as upon the amending or refusing to amend the order as aforesaid, or the statement of grounds, shall be final, and shall not be liable to be reviewed in any court by means of a writ of certiorari or mandamus or otherwise.

Abandonment of orders.

311.—(1.) In any case in which an order has been made as aforesaid, and a copy thereof sent as herein required, the party who has obtained the order, whether any notice of appeal against the order has been given or not, and whether any appeal has been entered or not, may abandon the order, by notice in writing under the hand of such party, or, where the order has been obtained by the guardians of a union, under the hand of the clerk to the guardians, to be sent by post or delivered to the appellant or the party entitled to appeal, and thereupon the order and all proceedings consequent thereon shall be void, and shall not be given in evidence, in case any other order for the same purposes is obtained.

(2.) In all cases of such abandonment the party abandoning shall pay to the appellant or the party entitled to appeal the costs which he has incurred by reason of the order and of all subsequent proceedings thereon.

(3.) The proper officer of the court before whom the appeal (if it had not been abandoned) might have been brought shall, upon application, tax and ascertain the costs, at any time, whether the court is sitting or not, upon production to him of the notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the guardians, or clerk abandoning the order, as the distance between the parties shall in his judgment require; and thereupon the sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be endorsed upon the said notice of abandonment, and the said notice so endorsed shall be filed among the records of the said court.

Guardians and officers interested to have access to the lunatic.

312. In every case of an inquiry, or appeal as to the union in which a pauper lunatic is settled, the guardians, clerks of the guardians, and relieving officers of every union interested in the inquiry or appeal, and every person duly authorised by them respectively, and the clerk of the local authority interested in the inquiry or appeal, and every person duly authorised by him, shall at all reasonable times be allowed free access, in the presence of the medical attendant, to the lunatic to examine him as to the premises.

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313. The provisions of section thirty-one of the Summary Jurisdiction Act, 1879, shall not apply to appeals under this part of this Act.

Section 31 of 42 & 43 Vict. c. 49, not to apply.

Recovery of Expenses.

314.—(1.) If the treasurer of any local authority, upon whom any order of justices for the payment of money under the provisions of this Act is made, refuses or neglects for twenty days after due notice of such order to pay the money, the money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the treasurer so refusing or neglecting, by warrant under the hands of any two justices authorised to make the order for payment of the money, or by an action at law, or by any other proceeding in a court of competent jurisdiction, against the treasurer.

Money ordered to be paid may be recovered by distress or action.

(2.) If the guardians upon whom any such order is made refuse or neglect for such time as aforesaid to pay the money, the same, together with the expenses of recovering the same, may be recovered by an action at law or by any other proceeding in any such court.

(3.) In case of any such action or proceeding no objection shall be taken to any default or want of form in any order for reception or maintenance, or in any certificate or adjudication under this Act, if such order or adjudication has not been appealed against, or if appealed against has been affirmed.

PART XI.

Penalties, Misdemeanors, and Proceedings.

* * * * *

319. If the manager of an institution for lunatics, or the person having charge of a single patient, omits to send to the coroner notice of the death of a lunatic within the prescribed time, he shall be guilty of a misdemeanor.

Notice to coroner of death.

320. Any person who makes default in sending to the Commissioners or any other person any return, report, extract, copy, statement, notice, plan, or document, or any information within his knowledge or obtainable by him, when required so to do under this Act or any other Act relating to lunacy, or any rules made under this Act or in complying with the said Acts or rules, shall for each day or part of a day during which the default continues be liable to a penalty not exceeding ten pounds, unless a penalty is expressly imposed by this or any other Act for such default: Provided that all or any part of the cumulative penalties may be remitted by the court in any case in which it is made to appear to the satisfaction of the court that the original default or its

Penalty for non-compliance with the Act and rules.

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continuance during any period of time arose from mere accident or oversight, and not from wilful or culpable neglect on the part of the person sued.

Obstruction.

321.—(1.) Any person who obstructs any Commissioner or Chancery or other visitor in the exercise of the powers conferred by this or any other Act, shall for each offence be liable to a penalty not exceeding fifty pounds, and shall also be guilty of a misdemeanor.

(2.) Any person who wilfully obstructs any other person authorised under this Act by an order in writing under the hand of the Lord Chancellor or a Secretary of State to visit and examine any lunatic or supposed lunatic, or to inspect or inquire into the state of any institution for lunatics, gaol, or place wherein any lunatic or person represented to be lunatic is confined or alleged to be confined, in the execution of such order, and any person who wilfully obstructs any person authorised under this Act by any order of the Commissioners to make any visit and examination or inquiry in the execution of such order, shall (without prejudice to any proceedings, and in addition to any punishment to which such person obstructing the execution of such order would otherwise be subject,) be liable for every such offence to a penalty not exceeding twenty pounds.

Ill-treatment.

322. If any manager, officer, nurse, attendant, servant, or other person employed in an institution for lunatics or any person having charge of a lunatic, whether by reason of any contract, or of any tie of relationship, or marriage, or otherwise, illtreats or wilfully neglects a patient, he shall be guilty of a misdemeanor, and, on conviction on indictment, shall be liable to fine or imprisonment, or to both fine and imprisonment at the discretion of the court, or be liable on summary conviction for every offence to a penalty not exceeding twenty pounds nor less than two pounds.

Penalties for permitting escape and for rescue.

323. If any manager, officer, or servant of an institution for lunatics wilfully permits, or assists, or connives at the escape or attempted escape of a patient, or secretes a patient, he shall for every offence be liable to a penalty not exceeding twenty pounds nor less than two pounds.

Abuse of female lunatic.

324. If any manager, officer, nurse, attendant, or other person employed in any institution for lunatics (including an asylum for criminal lunatics), or workhouse, or any person having the care or charge of any single patient, or any attendant of any single patient, carnally knows or attempts to have carnal knowledge of any female under care or treatment as a lunatic in the institution, or workhouse, or as a single patient, he shall be guilty of a misdemeanor, and, on conviction on indictment, shall be liable to be imprisoned with or without hard labour for any term not exceeding two years; and no consent or alleged consent of such female

thereto shall be any defence to an indictment or prosecution for such offence. Sect. 324.

By whom proceedings to be taken.

325.—(1.) Except as by this Act otherwise provided, proceedings against any person for offences against this Act may be taken—

(a.) By the secretary of the Commissioners upon their order for any offence;

(b.) By the clerk of the visitors of any licensed house for an offence committed within their jurisdiction;

(c.) By the clerk of the visiting committee of an asylum for any offence by any person employed therein;

and such proceedings shall not abate by the death or removal of the prosecuting secretary or clerk, but the same may be continued by his successor, and in any such proceedings the prosecuting secretary or clerk shall be competent to be a witness.

(2.) Except as by this Act otherwise provided, it shall not be lawful to take such proceedings except by order of the Commissioners, or of visitors having jurisdiction in the place where the offence was committed, or with the consent of the Attorney-General or Solicitor-General.

Recovery and application of penalties.

326. All penalties enforceable under this Act shall be recovered summarily according to the provisions of the Summary Jurisdiction Acts, and shall be paid—

a. When recovered by the secretary of the Commissioners, to such secretary;

b. When recovered by the clerk of the visitors of a licensed house, to the clerk of the peace for the county or borough, to be applied in the same way as money received for licences granted by the justices of the county or borough;

c. When recovered by a clerk of the visiting committee of an asylum, to the treasurer of the asylum for the purposes thereof;

d. In all other cases to the treasurer of the county or borough for which the convicting justices acted.

Appeals.

327. Any person aggrieved by an order of justices under this Act, other than orders adjudicating as to the settlement of a lunatic pauper and providing for his maintenance, may appeal to a court of quarter sessions, subject to the conditions and regulations of the Summary Jurisdiction Acts.

Secretary of State may direct prosecution.

328. A Secretary of State on the report of the Commissioners or visitors of any institution for lunatics may direct the Attorney-General to prosecute on the part of the Crown any person alleged to have committed a misdemeanor under this Act.

Evidence upon prosecution.

329.—(1.) Where any person is proceeded against under this Act on a charge of omitting to transmit or send any copy, list, notice, statement, report or other document required to be transmitted or

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sent by such person, the burden of proof that the same was transmitted or sent within the time required shall lie upon such person; but if he proves by the testimony of one witness upon oath that the copy, list, notice, statement, report or document in respect of which the proceeding is taken was properly addressed and put into the post in due time, or (in case of documents required to be sent to the Commissioners or a clerk of the peace or a clerk to guardians) left at the office of the Commissioners or of the clerk of the peace or clerk to guardians, such proof shall be a bar to all further proceedings in respect of such charge.

(2.) In proceedings under this Act, where a question arises whether a house is or is not a licensed house or registered as a hospital, it shall be presumed not to be so licensed or registered unless the licence or certificate of registration is produced, or sufficient evidence is given that a licence or certificate is in force.

Protection to persons putting the Act in force.

330.—(1.) A person who before the passing of this Act has signed or carried out or done any act with a view to sign or carry out an order purporting to be a reception order, or a medical certificate that a person is of unsound mind, and a person who after the passing of this Act presents a petition for any such order, or signs or carries out or does any act with a view to sign or carry out an order purporting to be a reception order, or any report or certificate purporting to be a report or certificate under this Act, or does anything in pursuance of this Act, shall not be liable to any civil or criminal proceedings whether on the ground of want of jurisdiction or on any other ground if such person has acted in good faith and with reasonable care.

(2.) If any proceedings are taken against any person for signing or carrying out or doing any act with a view to sign or carry out any such order, report, or certificate, or presenting any such petition as in the preceding sub-section mentioned, or doing anything in pursuance of this Act, such proceedings may, upon summary application to the High Court or a Judge thereof, be stayed upon such terms as to costs and otherwise as the Court or Judge may think fit, if the Court or Judge is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care.

* * * * *

Commissioners and visitors may summon witnesses.

332.—(1.) The Commissioners, or any two of them, and also the visitors of any licensed house, or any two of them, may, as they see occasion, require, by summons, under the common seal of the Commission, if by the Commissioners, and if by two only of the Commissioners or by two visitors, then under the hands and seals of such two Commissioners or two visitors, as the case may be, any person to appear before them to testify on oath touching any matters respecting which such Commissioners and visitors respectively are by this Act authorised to inquire (which oath such Commissioners or visitors are hereby empowered to administer).

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(2.) Every person who does not appear pursuant to the summons, or does not assign some reasonable excuse for not appearing, or who appears and refuses to be sworn or examined, shall, on being convicted thereof before a court of summary jurisdiction for every such neglect or refusal be liable to a penalty not exceeding fifty pounds. Sect. 332 (2).

(3.) Any two or more Commissioners or visitors may, if they think fit, examine on oath any person appearing before them as a witness, without having been summoned.

(4.) Any Commissioners or visitors who summon a person to appear and give evidence, may direct the secretary of the Commissioners or the clerk of such visitors, as the case may be, to pay to such person all reasonable expenses of his appearance and attendance, the same to be considered as expenses incurred in the execution of this Act, and to be taken into account and paid accordingly.

PART XII.

Miscellaneous Provisions, Definitions, Repeal.

Indemnity to Bank and others.

333. This Act, and every order purporting to be made under this Act, shall be a full indemnity and discharge to the Bank and every other company and society and their respective officers and servants, and all other persons respectively, for all acts and things done or permitted to be done pursuant thereto, or pursuant to the Rules under this Act, so far as relates to any property in which a lunatic is interested either in his own right, or as trustee or mortgagee, and it shall not be necessary to inquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make the same.

Meaning of word commission in other Acts extended.

334. Where in any Act of Parliament, order or rule of court, or instrument, reference is made to a commission of lunacy, or the inquisition thereon, the general commission and the inquisition, or certificate operating as an inquisition, and the issue and verdict thereon respectively in this Act mentioned, shall be deemed to be included in the reference.

Pension of lunatic payable by public department.

335. When any sum in respect of pay, pension, superannuation, or other allowance, or annuity under the control or management of any public department, is payable to any person, in respect either of service as a civil servant or of military or naval service or of provision for a widow or child of a person employed in civil, military, or naval service, and the person to whom the sum is payable is certified by a justice or minister of religion, and by a medical practitioner, to be unable by reason of mental disability to manage his or her affairs, the public department may pay so much of the said sum as the department may think fit to the institution or person having the care of the disabled person, and may pay the surplus, if any, or such part Forms 16, 17.

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thereof, as the department may think fit, for or towards the maintenance and benefit of the wife or husband and relatives of the disabled person, and the department shall be discharged from all liability in respect of any sums so paid.

Reception orders before Act.

336. In the case of orders made before the commencement of this Act for the reception of private patients, the person who signed the reception order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who before the commencement of this Act has signed an order for the reception of a private patient, as if the order had been made after the commencement of this Act upon a petition presented by him.

* * * * *

Forms.

339. Subject to rules made under this Act, the forms in the Second Schedule may be used, wherever applicable, with such modifications as circumstances may require, and if used, shall be deemed to be sufficient.

Savings as to criminal lunatics, etc.

340.—(1.) Save as in this Act otherwise expressly provided this Act shall not extend to criminal lunatics.

49 & 50 Vict. c. 25.

(2.) This Act shall not affect the provisions of the Idiots Act, 1886.

Definitions.

341. In this Act, if not inconsistent with the context—

"Asylum" means an asylum for lunatics provided by a county or borough, or by a union of counties or boroughs:

"The Bank" means the Governor and Company of the Bank of England:

"Clerk," in relation to a local authority, means, where the local authority is a county council, the clerk of the council, and where the local authority is a borough council, the town clerk of the borough:

"Commissioners" means the Commissioners in Lunacy:

"Contingent right," as applied to lands, includes a contingent and executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

3 & 4 Will. 4, c. 74.

"Convey" and "conveyance" include the performance of all formalities required to the validity of conveyances by married women and tenants in tail under the "Act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance," and also surrenders and other acts which a tenant of copyhold lands can perform preparatory to or in aid of a complete assurance of such copyhold lands:

Sect. 341.

"County," for the purpose of the powers exerciseable by justices of a county, does not include a county of a city or county of a town (except the City of London), but includes any county, riding, division, part or liberty of a county having a separate court of quarter sessions:

"County borough" has the same meaning as in the Local Government Act, 1888: 51 & 52 Vict. c. 41.

"Criminal lunatic" has the same meaning as in the Criminal Lunatics Act, 1884: 47 & 48 Vict. c. 64.

"District asylum" means an asylum provided by two or more counties in union, or by any county or counties in union with any borough or boroughs:

"Dividends" includes interest and other annual produce:

"Guardians" means guardians appointed under the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other body of persons performing under any local Act the like functions as guardians under the Poor Law Amendment Act, 1834: 4 & 5 Will. 4. c. 76.

"Hospital" means any hospital or part of a hospital or other house or institution (not being an asylum) wherein lunatics are received and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients:

"Inquisition" includes an order, certificate, or verdict operating as an inquisition:

"Institution for lunatics" means an asylum, hospital, or licensed house:

"Justice" means a justice of the peace;

"Land" includes an undivided share of land:

"Lease" includes underlease:

"Lunatic" means an idiot or person of unsound mind:

"Magistrate" means a stipendiary magistrate and any magistrate appointed to act at any of the police courts of the metropolis:

"Manager" in relation to an institution for lunatics means the superintendent of an asylum, the resident medical officer or superintendent of a hospital, and the resident licensee of a licensed house:

"Masters" means the Masters in Lunacy:

"Medical officer" means, in the case of an asylum, the medical superintendent, or if the superintendent is not a medical practitioner the resident medical officer of the asylum, in the case of a hospital the superintendent, and in the case of a licensed house the resident medical practitioner, or if none the medical practitioner who visits the house as the medical attendant thereof:

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"Medical practitioner" means a medical practitioner duly registered under the Medical Act, 1858, and the Acts amending the same, and the Medical Act, 1886 :

21 & 22 Vict. c. 90. 49 & 50 Vict. c. 48.

"Mortgage" includes every estate, interest, or property in real or personal estate, which is a security for money or money's worth :

"Next of kin" includes heir at law, and the persons entitled under the statutes for the distribution of the estates of intestates :

"Pauper" means a person wholly or partly chargeable to a union, county, or borough :

"Paymaster-General" includes the Assistant Paymaster-General for Supreme Court business :

"Prescribed" means prescribed by this Act or by any rules under this Act :

"Private patient" means a patient who is not a pauper :

"Property" includes real and personal property, whether in possession, reversion, remainder, contingency, or expectancy, and any estate or interest, and any undivided share therein :

"Public department" means the Treasury, the Admiralty, and a Secretary of State, and any other public department of the Government :

"Quarter Sessions" includes general sessions :

"Quarter sessions borough" means a borough having a separate court of quarter sessions :

"Reception order" means an order or authority made or given before or after the commencement of this Act for the reception of a lunatic, whether a pauper or not, in an institution for lunatics or as a single patient, and includes an urgency order :

"Relative" means a lineal ancestor or lineal descendant, or a lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother :

"Stock" includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer alone, or by instrument of transfer, accompanied by other formalities, and any share or interest therein, and also shares in ships registered under the Merchant Shipping Act, 1854 :

17 & 18 Vict. c. 104.

"Transfer" includes assignment, payment, and other disposition, and the execution, and performance, of every assurance and act to complete a transfer :

"Trust" and "trustee" include implied and constructive trusts, and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage :

"Union" means any parish or union of parishes for which there is a separate board of guardians :

"Visiting committee" means a committee of visitors of an asylum appointed under this Act: Sect. 341.

"Workhouse" includes an asylum provided for reception and relief of the insane under the Metropolitan Poor Act, 1867, and the managers of every such asylum shall exercise the powers and perform the duties by this Act conferred and imposed upon the guardians of the union to which a workhouse belongs. 30 Vict. c. 6.

342. The Acts mentioned in the Fifth Schedule are hereby repealed to the extent set forth in the third column of the same schedule. Repeal.

Provided that this repeal shall not affect any jurisdiction or practice established, confirmed, or transferred, or salary or compensation or superannuation secured by or under any enactment repealed by this Act.

SCHEDULES.

SECOND SCHEDULE.

* * * * * * Section 248.

FORM 21.

FORM of AGREEMENT for uniting for the purpose of erecting or providing an asylum for the reception of lunatics.

IT is agreed this day of between the visiting committees for the county of and the borough of [*as the case may be*], that the said county and borough [*as the case may be*], shall henceforth be united for the purposes of the Lunacy Act, 1890; and that an asylum for the reception of lunatics, with all necessary buildings, courts, yards, and outlets, shall be immediately provided and properly fitted up and accommodated for the purposes mentioned in the said Act; and that the necessary expenses attending the providing, building, fitting up, repairs, and maintenance of the said asylum shall be defrayed by the said county and borough, so united, in the following proportions, such proportions being fixed according to the probable extent of the accommodation required for the lunatics of the contracting county and borough; (that is to say,)

The county of Five ninths of the said expenses,
The borough of Four ninths of the same,

[*as the case may be, or if the expenses are not fixed with reference to the probable extent of the accommodation, insert instead of the last clause.*]

The expenses shall be from time to time charged upon and raised by such county and borough in proportion to their respective populations as stated in the last return for the time being made of the same under the authority of Parliament.

And it is further agreed, that the committee of visitors to superintend the building, erection, and management of the said asylum shall be appointed in the following proportions; the council for the said county of shall appoint(*i*) , and the council for the borough of shall appoint(*i*) and the proportions in which the said committee of visitors are to be appointed as aforesaid may be from time to time varied, with the consent in writing under the hands of the greater number of visitors of the said county and borough, and with the consent of the Commissioners in Lunacy. And hereunto, we, the undersigned, being the majority of each of the committees appointed by the said councils respectively, do on behalf of the said councils set our hands and seals, this day of .

(*i*) Insert in these blanks either the number or the proportion of visitors: and where the number of the committee of visitors is not fixed in the agreement, but only the proportions, a provision shall be made by the agreement for fixing from time to time the number of such committee.

Schedules.

FOURTH SCHEDULE.

Sections 169, 240, 245, 246.

BOROUGHS, THE COUNCILS OF WHICH ARE LOCAL AUTHORITIES UNDER THIS ACT.

Barnstaple.
Bedford.
Berwick-on-Tweed.
Bridgwater.
Bury St. Edmunds.
Cambridge.
Colchester.
Doncaster.
Dover.
Grantham.
Gravesend.
Guildford.
Hereford.
King's Lynn.
London (City of).
Maidstone.
Newark.
Newbury.
Newcastle-under-Lyme.
New Sarum.
New Windsor.
Penzance.
Poole.
Rochester.
Scarborough.
Shrewsbury.
Tiverton.
Warwick.
Wenlock.
Winchester.

Section 342.

FIFTH SCHEDULE.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
4 & 5 Will. 4, c. 76. -	An Act for the amendment and better administration of the Laws relating to the Poor in England and Wales.	Section forty-five.
8 & 9 Vict. c. 100. -	An Act for the regulation of the care and treatment of lunatics.	The whole Act.
13 & 14 Vict. c. 60. -	The Trustee Act, 1850 - -	Sections three, four, five, six, and fifty-six. Sections twenty, twenty-six, twenty-seven, twenty-eight, thirty-one, forty, forty-one, forty-two, forty-four, forty-five, fifty-one, fifty-two, and fifty-three, so far as they relate to "the Lord Chancellor entrusted as aforesaid." Except so far as the above sections relate to Ireland.
15 & 16 Vict. c. 48. -	An Act for the amendment of the law respecting the property of lunatics.	The whole Act.
15 & 16 Vict. c. 55. -	An Act to extend the provisions of the Trustee Act, 1850.	Sections six and seven, so far as relates to the Lord Chancellor entrusted as aforesaid, and sections ten and eleven. Except so far as the above sections relate to Ireland.
16 & 17 Vict. c. 70. -	The Lunacy Regulation Act, 1853 -	The whole Act.
16 & 17 Vict. c. 96. -	An Act to amend an Act passed in the ninth year of Her Majesty for the regulation of the care and treatment of lunatics.	The whole Act.
16 & 17 Vict. c. 97. -	The Lunatic Asylums Act, 1853 -	The whole Act.
18 Vict. c. 13. - -	An Act to amend and explain the Lunacy Regulation Act, 1853.	The whole Act.
18 & 19 Vict. c. 105. -	An Act to amend the Lunatic Asylums Act, 1853, and the Acts passed in the ninth and seventeenth years of Her Majesty for the Regulation of the Care and Treatment of Lunatics.	The whole Act.
19 & 20 Vict. c. 87. -	An Act to amend the Lunatic Asylums Act, 1853.	The whole Act.

Schedules.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
23 & 24 Vict. c. 127. -	An Act to amend the law relating to attorneys, solicitors, proctors, and certificated conveyancers.	Section twenty-nine.
24 & 25 Vict. c. 55. -	An Act to amend the laws regarding the removal of the poor, and the contribution of parishes to the common fund in unions.	Section seven.
25 & 26 Vict. c. 86. -	The Lunacy Regulation Act, 1862 -	The whole Act.
25 & 26 Vict. c. 111. -	The Lunacy Acts Amendment Act, 1862.	The whole Act.
26 & 27 Vict. c. 110. -	The Lunacy Acts Amendment Act, 1863.	The whole Act.
28 & 29 Vict. c. 80. -	The Lunacy Act Amendment Act, 1865.	The whole Act.
30 Vict. c. 6. - -	The Metropolitan Poor Act, 1867 -	In section thirty, the words "and every such asylum" to the end of the section.
30 & 31 Vict. c. 87. -	The Court of Chancery (Officers) Act, 1867.	Section thirteen.
30 & 31 Vict. c. 106. -	The Poor Law Amendment Act, 1867.	Section twenty-two, except as regards persons suffering from delirium tremens, or from bodily disease of a contagious or infectious character.
31 & 32 Vict. c. 122. -	The Poor Law Amendment Act, 1868.	Section forty-three.
34 & 35 Vict. c. 14. -	The County Property Act, 1871 -	Section two.
38 & 39 Vict. c. 77. -	The Supreme Court of Judicature Act, 1875.	Section seven. In section twenty-six, the words "(including the percentage on estates of lunatics)" and the words "(including the masters and other officers in lunacy)".
45 & 46 Vict. c. 82. -	The Lunacy Regulation Amendment Act, 1882.	The whole Act.
48 & 49 Vict. c. 52. -	The Lunacy Acts Amendment Act, 1885.	The whole Act.
51 & 52 Vict. c. 41. -	The Local Government Act, 1888 -	Section thirty-two, sub-section three, sub-clause (c); section eighty-six, sub-sections one, two, three, four, six, seven, and eight.
52 & 53 Vict. c. 41. -	The Lunacy Acts Amendment Act, 1889.	The whole Act.

CUSTOMS AND INLAND REVENUE ACT, 1890.

(53 VICT. CAP. 8.)

An Act to grant certain Duties of Customs and Inland Revenue, to repeal and alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. [9th June, 1890.]

1. This Act may be cited as the Customs and Inland Revenue Act, 1890. Short title.

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7. The following duties of Excise and of Customs, that is to say,— Payment of local taxation (Customs and Excise) duties

(a) the additional duties on spirits imposed by this Act; and

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to local taxation accounts of England, Scotland and Ireland.
43 & 44 Vict. c. 20.
44 & 45 Vict. c. 12.
52 & 53 Vict. c. 7.

(b) such portion of the duties of Excise and of Customs imposed by section eleven of the Inland Revenue Act, 1880, and section three of the Customs and Inland Revenue Act, 1881, as amended by section three of the Customs and Inland Revenue Act, 1889, in respect of beer, as equals threepence for every thirty-six gallons.

shall be called the local taxation (Customs and Excise) duties, and the proceeds of those duties shall be divided between England, Scotland, and Ireland in the same proportions, and be paid to the same local taxation accounts, and in the like manner and subject to the like regulations of the Treasury, and shall be ascertained as to proportion and otherwise in like manner as the one-half of the proceeds of the probate duties applicable to local purposes is now by law divided, paid, and ascertained, and the proceeds so paid shall be appropriated as Parliament may hereafter direct by any Act passed in the present session (*j*).

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OPEN SPACES ACT, 1890.

(53 & 54 VICT. CAP. 15.)

An Act to amend the Open Spaces Act. [25th July, 1890.]

* * * * *

Short title and construction.
40 & 41 Vict. c. 35.
44 & 45 Vict. c. 34.
50 & 51 Vict. c. 32.

1. This Act may be cited as the Open Spaces Act, 1890, and may be read with the Metropolitan Open Spaces Acts, 1877 and 1881, and the Open Spaces Act, 1887 (hereinafter called the principal Acts) as one Act, and this Act and the principal Acts may be cited as the Open Spaces Acts, 1877 to 1890 (*k*).

Definitions.

2. In this Act—

The expression "local authority" shall mean and include any of the public bodies who are empowered by the principal Acts to hold open spaces for the purposes of the Open Spaces Acts, 1877 to 1890 (*l*):

"The court" shall mean the Chancery Division of the High Court of Justice in England and Ireland, and the county court of the district in which the whole or part of any open space may be situated as herein provided.

Transfer to local authority of spaces

3. The trustees of land held upon trust for the purposes of public recreation may, in pursuance of a resolution duly passed as provided

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(*j*) As to the appropriation of these proceeds, see the 53 & 54 Vict. c. 60, *post*. Section 7 is the only section of this Act bearing on the subject of this work.

(*k*) The earlier Acts will be found set out in Lumley's Public Health.

(*l*) The expression will include the council of a county borough as the urban authority for the borough, but it does not include a county council, except the London County Council, who are the successors of the Metropolitan Board of Works. See 40 & 41 Vict. c. 35, s. 1; 50 & 51 Vict. c. 32, s. 5.

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by section two of the Metropolitan Open Spaces Act, 1881 (*m*), transfer by free gift, absolutely or for a limited term, to the local authority of the district in which the whole or the greater part in area of the land is situate, the land so held by them, if such authority is willing to accept such transfer, to be held by the transferees on the trusts and subject to the conditions on which the transferors held the same, or upon such other trusts and subject to such other conditions (so that the land be appropriated to the purposes of public recreation) as may be agreed upon between the transferors and transferees with the approval of the Charity Commissioners for England and Wales, or, as respects Ireland, of the Commissioners of Charitable Donations and Bequests for Ireland. Subject to the obligation of the land so transferred being used for the purposes of public recreation as aforesaid, the local authority may hold the same as and for the purposes of an open space under the Open Spaces Acts, 1877 to 1890. This section shall not apply to any trustees elected or appointed under any local or special Act of Parliament.

Land held by trustees for purposes of public recreation.

4. When any open space (*n*) shall be situate wholly or in part within the district of a local authority, and shall be vested in trustees, other than such trustees as are mentioned in the principal Acts (*o*), or in the last preceding section of this Act, for any charitable purpose, and as part of their trust estate, and it shall appear to the majority of such trustees that such open space is no longer required for the purposes of their trust, or that the same may with advantage to the trust be dealt with under the provisions of this section, it shall be lawful for such trustees, in pursuance of a resolution passed by them in the manner prescribed in the last preceding section of this Act (*p*), and where the open space is subject to the provisions of the Charitable Trusts Acts, 1883 to 1887 (*q*), with such authority or approval as is required by those Acts for a sale of the open space (*r*), and in other cases in pursuance of an order of the court to be obtained as hereinafter provided (*s*), to

Similar power with respect to trustees of other open spaces.

(*m*) The resolution must be passed at a meeting of the trustees summoned by at least one month's notice in writing, left at or sent by post to their last known or usual place of abode, and it must be passed by a majority of not less than two-thirds of those present, and confirmed by a similar majority at a meeting summoned in like manner, and held at an interval of not less than a month after the first meeting.

(*n*) Open space means any land (whether inclosed or uninclosed) which is not built on, and which is laid out as a garden, or is used for purposes of recreation, or lies waste and unoccupied. 44 & 45 Vict. c. 34, s. 1.

(*o*) See 44 & 45 Vict. c. 34, s. 2. These trustees may act under a private or local Act.

(*p*) See note (*m*), *supra*.

(*q*) This should be 1853 to 1887. These Acts are—16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 32 & 33 Vict. c. 110; 50 & 51 Vict. c. 49. To these must now be added 54 Vict. c. 17; 57 & 58 Vict. c. 35.

(*r*) The authority or approval seems to be that of the Charity Commissioners under 16 & 17 Vict. c. 137, s. 24.

(*s*) See s. 5 of this Act.

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convey or demise such open space to such local authority upon such terms as shall be mutually agreed between them, and the local authority shall thenceforth be entitled to hold the same as an open space upon the terms and under the conditions specified in any such conveyance or demise, or upon such terms and under such conditions as may be so authorised or approved, or as the court shall from time to time order, as the case may be (*t*).

Procedure for obtaining order of court.

5. An order of the court may be made upon application by the trustees, and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice to be given to such persons as to the court shall seem expedient, and may make such order thereon as in its discretion appears proper. Rules for carrying out the preceding provisions of this Act may from time to time be made by the same authority as the General Rules or Orders of the High Court of Justice in England and Ireland, and of the county courts in England, Ireland, and Wales respectively are made (*u*).

Open Spaces Acts to apply outside district of local authority.

6. The Open Spaces Acts, 1877 to 1890, shall be applicable to the whole of any open space which is wholly or partly situated without the district of a local authority in the same manner to all intents and purposes as if the whole of such open space had been situated within such district.

Buildings on open spaces.

7. Where a portion of an area of land not exceeding a twentieth part is covered with a building or buildings, such land may notwithstanding be deemed to be an open space within the meaning of the Open Spaces Acts, 1877 to 1890.

POLICE ACT, 1890.

(53 & 54 VICT. CAP. 45) (*x*).

An Act to make provision respecting the Pensions, Allowances, and Gratuities of Police Constables in England and Wales, and their Widows and Children, and to make other provisions respecting the Police of England and Wales. [14th August, 1890.]

* * * * *

PART I.

Superannuation of Constables.

Right of constables to pensions.

1. Subject to the provisions of this Act, every constable in a police force—

(a) if he has completed not less than twenty-five years approved service (*y*), and, where a limit of age is prescribed by the

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(*t*) The court is defined by s. 2.

(*u*) No rules have yet been made under this section.

(*x*) This Act repeals all previous statutes relating to police superannuation. The authority charged with the execution of it in a county is the standing joint committee, who are the police authority as defined by the Third Schedule.

(*y*) Approved service as defined by s. 4, *post*.

pension scale in force under this Act, is of an age not less than the age so prescribed, shall, on the expiration of such time not exceeding four months after he has given written notice to the police authority of his desire to retire as the police authority may fix, be entitled without a medical certificate to retire and receive a pension for life; and

(b) if after he has completed fifteen years approved service he is incapacited for the performance of his duty by infirmity of mind or body, shall be entitled on a medical certificate to retire and receive a pension for life; and,

(c) if before he has completed fifteen years approved service he is incapacited for the performance of his duty by infirmity of mind or body, shall be entitled on a medical certificate to retire, and thereupon the police authority may, if they think fit, grant him a gratuity; and,

(d) if at any time he is incapacitated for the performance of his duty by infirmity of mind or body occasioned by an injury received in the execution of his duty without his own default, shall be entitled on a medical certificate to retire and receive a pension for life.

Pension allowances and gratuities to widow and children.

2.—(1.) If a constable dies whilst in a police force from the effect of an injury received in the execution of his duty without his own default, the police authority shall grant a pension to his widow, and allowances to his children.

(2.) If a constable dies whilst in a police force from any other cause, the police authority may, if they think fit, grant gratuities to his widow and children or any of them.

(3.) If a constable, to whom a pension has been granted because he was incapacited for the performance of his duty by an injury received in the execution of his duty without his own default, dies from the effects of the injury within twelve months after the grant of the pension, the police authority may, if they think fit, grant a pension to his widow, either for a term of years or otherwise.

(4.) If a constable to whom a pension has been granted dies within twelve months after the grant of the pension, the police authority may, if they think fit, grant gratuities to his widow and children or any of them.

Pension scale.

3.—(1.) The pensions, allowances, and gratuities granted to constables of a police force and to their widows and children shall be in accordance with the pension scale for the force.

(2.) The pension scale for a police force shall be—

(a) as regards ordinary pensions, a fixed scale adopted by the police authority within the maximum and minimum limits set forth in Part I. of the First Schedule to this Act; and

(b) as regards special pensions and allowances and gratuities, the scale set forth in Part II. of that Schedule.

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(3.) The police authority shall before the first day of January one thousand eight hundred and ninety-one send to the Secretary of State a copy of the scale adopted by them for ordinary pensions.

(4.) If any police authority do not before the said date adopt a fixed scale for ordinary pensions and send a copy thereof to the Secretary of State, the Secretary of State may frame for that authority a fixed scale for ordinary pensions within the maximum and minimum limits set forth in Part I. of the First Schedule to this Act, and that scale shall have the same effect as if it were a scale adopted by the police authority under this section.

(5.) The pension scale for each force shall come into operation on the commencement of this Act.

(6.) A police authority may from time to time adopt and send to the Secretary of State a new scale for ordinary pensions in lieu of the scale for the time being in force, but any such new scale shall not, without the consent of the constable, apply to any constable appointed before the day of its coming into operation.

(7.) The rules contained in Part III. of the First Schedule to this Act shall apply to all pensions, allowances, and gratuities granted under this Act.

Reckoning of service for pension.

4.—(1.) The service of a constable for the purposes of this Act shall be subject to such deductions in respect of sickness, misconduct, or neglect of duty as may be made therefrom in pursuance of the regulations of the force to which the constable belongs; and the expression "approved service" shall for the purposes of this Act mean such service as may after such deductions as aforesaid (if any) be certified under the order of the police authority to have been diligent and faithful service, but shall not, unless the regulations of the police force otherwise prescribe, include service before twenty-one years of age.

(2.) A certificate signed by the chief officer of a police force as to the period of a constable's approved service in that force shall be sufficient evidence thereof.

(3.) Where a deduction is made from a constable's service in respect of sickness, misconduct, or neglect of duty, notice of the deduction shall as soon as may be after the occurrence of the cause for which the deduction is made be given to the constable; and the constable may appeal to the chief officer of his police force against any act of an officer of police superior to the constable which prevents him from reckoning any period of actual service as approved service, and any period of actual service allowed by the chief officer on such appeal shall be deemed to be approved service: Provided that, in the case of a borough having a separate police force, the decision of the chief officer shall be subject to the approval of the watch committee.

(4.) Where a constable has served in more than one police force in any part of the United Kingdom, approved service in any such police force in which he has completed not less than three years

approved service, and from which he has with the written sanction of the chief officer of that force removed to another force, shall be reckoned as approved service in the force in which the constable is serving at the time of his retirement. Sect. 4 (4).

(5.) Where a constable with the knowledge of the police authority or of the chief officer of his police force belongs to the army reserve, and is called out for training or for permanent service, he shall be entitled, on returning to the police force after the end of such training or service, to reckon any approved service which he was entitled to reckon at the commencement thereof.

Proof of incapacity for duty liability to serve again, and revision of pension.

5.—(1.) Before granting to a constable an ordinary pension on the ground of his being incapacitated by infirmity for the performance of his duty, the police authority shall be satisfied by the evidence of some legally qualified medical practitioner or practitioners, selected by the police authority, that the constable is so incapacitated, and that the incapacity is likely to be permanent.

(2.) Where the application is for a special pension, the police authority shall also be satisfied that the injury was received by the constable in the execution of his duty, that it was received without the default of the constable, and that the infirmity is attributable to the injury, and shall also determine whether the injury was accidental or not, and whether the disability of the constable for earning his livelihood is total or partial; and for the purpose of determining any of the said questions which ought to be determined on medical grounds shall take the like evidence as above mentioned.

(3.) Where a pension is granted to a constable on the ground of incapacity for the performance of his duty, the police authority shall, yearly or otherwise, until the power under this Act of requiring the constable to serve again ceases, satisfy themselves that the incapacity continues, and, unless they resolve that such evidence is unnecessary, shall satisfy themselves by the like evidence as above mentioned (*z*).

(4.) In the event of the incapacity ceasing before the time at which the constable would, if he had continued to serve, have been entitled without a medical certificate to retire and receive a pension for life, the police authority may cancel his pension and require him to serve again in the police force, in a rank not less than the rank which he held before his retirement, and at a rate of pay not less than the rate which he received before his retirement (*a*).

(5.) Where a constable so serves again, the provisions of this Act as to retirement and pensions, allowances, and gratuities shall apply

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(*z*) The power hereby conferred cannot be exercised by the police authority for any collateral purpose, such as compelling the constable to come within the jurisdiction of the Bankruptcy Court. The police authority have, however, power to fix the time and place for the examination of the constable. *R.* v. *Lord Leigh, In re Kinchant*, [1897] 1 Q. B. 132.

(*a*) The pension cannot be cancelled without giving the constable an opportunity to serve again. *R.* v. *Lord Leigh, In re Kinchant, supra.*

Sect. 5 (5).

as if he had not previously retired, save that, except in the case of pensions for non-accidental injuries received in the execution of duty, he shall not reckon as approved service the time which elapsed between his former retirement and the commencement of his service again.

(6.) Where a pension is granted to a constable on a scale applicable to total disability for earning a livelihood, it shall be so granted for such period as may be fixed by the police authority, and, if at the expiration of that period the pensioner continues to be totally so disabled, the pension shall, in the discretion of the police authority, either be made permanent or renewed from time to time. If at any time before the pension is made permanent the police authority are satisfied by the evidence of a legally qualified medical practitioner that the pensioner's disability for earning his livelihood has become partial, the pension shall, within the limits allowed by the pension scale, be reduced to the amount allowed by the provisions of the scale applicable to cases of partial disability.

(7.) If a constable fails or refuses, when required by the police authority, to be examined by some legally qualified medical practitioner selected by that authority, the police authority may deal with the constable in all respects as if they were satisfied by the evidence of such a practitioner that the constable is not incapacitated for the performance of his duty or, as the case may be, is only partially disabled.

(8.) The decision of the police authority on the matters above in this section mentioned shall be final, save that in the case of a borough the constable may appeal to the council of the borough, and the decision of the council shall be final.

Power to reduce pension where infirmity partially due to misconduct.

6. Where a constable retires on account of infirmity of mind or body, and the police authority are satisfied on medical evidence that the constable has brought about or contributed to the infirmity by his own default or his vicious habits, the police authority may, in their discretion, reduce the amount of his pension by an amount not exceeding one half of the pension to which he would be otherwise entitled.

Assignment of pensions and regulations as to payment of pensions, etc.

7. The following provisions shall have effect with respect to every pension, allowance, and gratuity (in this section referred to as a "grant") payable by the police authority to any person (in this section referred to as the pensioner):—

(1.) Every assignment of and charge on a grant, and every agreement to assign or charge a grant, shall, except so far as made for the benefit of the family of the pensioner, be void, and on the bankruptcy of the pensioner the grant shall not pass to any trustee or other person acting on behalf of the creditors:

(2.) Where any parochial relief is given to a pensioner or to anyone whom he is liable to maintain, the police authority may pay the whole or any part of the grant to the guardians

or other authority giving the relief, and the same, when so paid, may be applied in repayment of any sums expended in such relief, and, subject thereto, shall be paid or applied by the guardians or other authority to or for the benefit of the pensioner:

(3.) If the pensioner neglects to maintain any person whom he is liable to maintain, the police authority may in their discretion pay or apply the whole or any part of the grant to or for the benefit of that person:

(4.) If the pensioner appears to the police authority to be insane or otherwise incapacitated to act, the police authority may pay so much of the grant as the police authority think fit to the institution or person having the care of the pensioner, and may pay the surplus (if any) or such part thereof as the authority think fit for or towards the maintenance and benefit of the wife or relatives of the pensioner:

(5.) On the death of a pensioner to whom a sum not exceeding one hundred pounds is due on account of a grant, then, if the police authority so direct, probate or other proof of the title of the personal representative of the deceased may be dispensed with, and the sum may be paid or distributed to or among the persons appearing to the police authority to be beneficially entitled to the personal estate of the deceased pensioner, or to or among any one or more of those persons, or in case of the illegitimacy of the deceased pensioner, to or among such persons as the police authority may think fit, and the police authority, and any officer of the police authority making the payment, shall be discharged from all liability in respect of any such payment or distribution:

(6.) Any sum payable to a minor on account of a grant may be paid either to the minor or to such person and on such conditions for the benefit of the minor as to the police authority seems expedient:

(7.) Where a payment is made to any person by a police authority in pursuance of this section, the receipt of that person shall be a good discharge to that authority for the sum so paid:

(8.) A police authority may, with the consent of the Secretary of State, make rules with respect to declarations to be taken for any purpose relating to grants payable by that authority, and while any such rules made by a police authority are in force, a person shall not be entitled to receive any sum in respect of a grant payable by that authority until any declaration required by those rules has been made.

Forfeiture of pension or allowance.

8. A pension or allowance under this Act is granted only upon condition that it becomes forfeited, and may be withdrawn by the police authority, in any of the following cases:—

(a) if the grantee is convicted of any offence for which he is sentenced to penal servitude or to imprisonment for a term

Sect. 8 (a).

exceeding three months with hard labour, or to imprisonment for a term exceeding twelve months, whether with or without hard labour; or

(b) if the grantee knowingly associates with thieves or reputed thieves; or

(c) if the grantee refuses to give to the police all information and assistance in his power, for the detection of crime, for the apprehension of criminals, and for the suppression of any disturbance of the public peace; or

(d) if the grantee enters into or continues to carry on any business, occupation, or employment which is illegal, or in which he has made use of the fact of his former employment in the police in a manner which the police authority consider to be discreditable and improper.

Such forfeiture and withdrawal may affect the pension wholly or in part, and may be permanent or temporary, as the police authority may determine.

Punishment for obtaining pension, etc., by fraud.

9. If a person obtains or attempts to obtain for himself or for any other person any pension, gratuity, or allowance under this Act, or any payment on account of any such pension, gratuity, or allowance by means of any false declaration, false certificate, false representation, false evidence, or personation, or by malingering or feigning disease or infirmity, or by maiming or injuring himself, or causing himself to be maimed or injured, or otherwise producing disease or infirmity, or by any other fraudulent conduct, he shall be liable on summary conviction to imprisonment with or without hard labour for a term not exceeding four months or to a fine not exceeding twenty-five pounds, to be paid (notwithstanding anything in any charter or in any other Act whether relating to municipal corporations or otherwise) to the pension fund of the force from which he obtained or attempted to obtain the pension, gratuity, or allowance, and on conviction by a jury to imprisonment, with or without hard labour, for a term not exceeding two years, and also in either case, to forfeit any pension, gratuity, or allowance so obtained.

Saving of right of dismissal and reduction in rank.

10. Nothing in this Act shall prejudice the existing right of any police authority to dismiss any constable, or to reduce him to any lower rank or lower rate of pay, or shall prevent his claim to pension from being refused on account of misconduct, or of negligence in the discharge of his duties, or on account of any of the grounds on which his pension if granted would be liable to be forfeited and withdrawn.

Appeal in case of forfeiture, or refusal of pension or allowance.

11. In any of the following cases—

(a) where a pension after being granted to a constable has subsequently in pursuance of this Act been declared to have been forfeited, and

(b) where a constable is dismissed without a pension to which he would be otherwise entitled, and in any other case

Sect. 11 (b).

where a constable, or the widow or child of a constable, claims a pension or allowance under this Act as of right, and the police authority do not admit the claim,

the constable, widow, or child may apply to the police authority for a re-consideration of the claim to the pension or allowance, and if aggrieved by the decision upon such re-consideration may apply to the next practicable court of quarter sessions for the county within which the constable last served; or if the constable last served in the police force of a borough having a separate police force and a separate court of quarter sessions, then to the next practicable court of quarter sessions for that borough, and that court, after inquiry into the case, may make such order in the matter as appears to the court just, which order shall be final; but nothing in this section shall confer a right to appeal against the exercise of any discretion, or against any decision which is declared by this Act to be final

Application of Act to chief officer of police.

12. The provisions of this Act shall apply to a chief officer of police and to the assistant commissioners of the metropolitan police in like manner, so nearly as circumstances admit, as they apply to any other constable, except that, in the case of a chief officer, the certificate of approved service and the sanction to removal from one force to another may be given by a resolution of the police authority, and that nothing in this section shall make any pension which is now payable out of money provided by Parliament payable from any other source.

Suspension of pension in case of appointment to new office.

13.—(1.) Where a constable in receipt of a pension under this Act from a police authority takes service in any police force, his pension may be suspended by that police authority in whole or in part so long as he remains in that service.

(2.) If a constable in receipt of a pension under this Act is appointed to an office remunerated out of money provided by Parliament, or out of a county or borough rate or fund, he shall not, while holding that office, receive more of the pension than together with the remuneration of that office is equal to one and a half times the remuneration of the office in respect of which the pension was awarded (*b*).

Provision as to service in more than one capacity. 50 & 51 Vict. c. 67.

14. Where a person has served in two or all of the following capacities—

(i.) as a civil servant within the meaning of the Superannuation Act, 1887 (*c*);

(*b*) The provisions of this sub-section apply to any constable in receipt of a pension who is appointed to any office remunerated out of any parochial, district, or other rate. See the Police Act, 1893, s. 4, *post*.

(*c*) A civil servant is defined by s. 12 of the Superannuation Act, 1887, to mean "a person who has served in an established capacity in the permanent civil service of the State within the meaning of section 17 of the Superannuation Act, 1859." By the last-mentioned section it is provided that "no person hereafter to be appointed shall be deemed to have served in the permanent civil service of the State unless such person holds his appointment directly from the Crown or has been admitted into the civil service with a certificate from the Civil Service Commissioners."

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(ii.) in a police force with a salary paid out of the police fund;

(iii.) in a police force with a salary paid out of money provided by Parliament;

he shall be entitled to reckon his entire period of service in both or all capacities for the purpose of pension, and the pension shall be on the scale and subject to the statutory requirements affecting pensions in the service from which he last retires.

Provided as follows:—

(1.) For the purposes of the pension three years of police service shall be reckoned as equivalent to four years of service as a civil servant, and conversely; and

(2.) The pension shall be payable from money provided by Parliament, and from the police pension fund in such proportions as the Treasury may determine, regard being had to the period of service and the salary received in each capacity.

Rateable deductions from pay to be carried to pension fund.

15.—(1.) The police authority of every police force shall deduct from the pay of every constable in the force—

(a) sums at a rate not exceeding two and a half per cent. per annum on his pay (in this Act referred to as the rateable deduction); and

(b) such stoppages during sickness, and such fines for misconduct, as may be provided by the regulations respecting the force.

(2.) Where a constable has removed to some other force or forces with the written sanction of the chief officer of any force he has removed from, and such constable in due course becomes entitled to and is awarded a pension, the police authority in whose service he then is shall be entitled to call upon the other police authority or authorities with whom he shall have served approved service, and they shall contribute a proportionate part of any pension to such constable reckoned according to the approved service and pay of such constable during his service in such force, and the said proportionate part shall be settled by agreement between the police authorities, or in default of agreement by an arbitrator appointed by the Secretary of State.

Establishment of pension fund, and fines, fees, etc. to be carried to fund.

16.—(1.) There shall be a pension fund of every police force, and there shall be carried to that fund—

(a) the deductions (including stoppages and fines) made in pursuance of this Act from the pay of the constables in the force (*d*); and

(b) the fines imposed by a court of summary jurisdiction, when imposed on constables in the force, or for assaults on constables in the force, and the fines or portions of fines imposed by a court of summary jurisdiction for other

(*d*) See the preceding section.

offences, and awarded to informers being constables in the force; and

(c) such fines or portions of fines, and such fees payable to or received by constables, as by any Act are directed or authorised to be carried to the superannuation or pension fund of the police force: and

(d) the net sums arising from the sale of worn or cast clothing supplied for the use of constables of the force; and

(e) such proportion of any sum received on account of constables whose services have been lent in consideration of payment as the police authority may consider to be a fair contribution to the pension fund in respect of those constables; and

(f) any payments or contributions payable under the provisions of any local and personal Act to the pension or superannuation fund of any police force, whether out of any fund, rate, or account under the control of the police authority, or payable by any other authority, board, or persons; and

(g) all dividends and other annual sums received in respect of the investments of the pension fund.

(2.) Unless the authority having control of the fund to which the sums hereinafter mentioned would but for this section be carried otherwise resolve, and except so far as the said sums are subject to the foregoing provisions of this section, there shall also be carried to the pension fund of every police force the following sums, namely:—

(h) The net sums received in the police area for pedlars and chimney sweepers certificates (*e*); and

(i) All fees payable to or received by any constable of the force in the execution of his duty as such, or in the execution of any other duty which may be required to be performed by any constable of the force; and

(k) The fines imposed by a court of summary jurisdiction for offences under the Licensing Acts, 1872 and 1874, when committed within the police area, or for any offence under a general or local Act similar to any of the above offences. 35 & 36 Vict. c. 94. 37 & 38 Vict. c. 49.

(3.) The police authority may also direct any sums under the control of the police authority in that capacity, or under the control of the police force, or of any member thereof in that capacity, to be carried to the pension fund, provided that this direction shall not be given in the case of any fund held on a private trust.

(4.) Any resolution passed for the purposes of this section may be revoked or varied.

(*e*) *I.e.*, under 34 & 35 Vict. c. 96, s. 5, and 38 & 39 Vict. c. 70, s. 10. The Chimney Sweepers Act, 1894 (57 & 58 Vict. c. 51), s. 3, provides that all fees received under the last-mentioned section shall be paid to the pension fund of the police force of the police district in which the certificate was issued.

Sect. 16 (5).

(5.) The provisions of this section shall have effect notwithstanding anything in any charter or in any other Act, whether relating to municipal corporations or otherwise.

Distribution of sums granted out of Customs and Excise duties for police superannuation.

17.—(1.) Any annual sum which under an Act passed in the present session (*f*) relating to the distribution of certain duties of Customs and Excise is required to be distributed among the police authorities of the police forces in England and Wales, other than the Metropolitan police force (which sum is in this Act referred to as the Exchequer contribution), shall be distributed according to the following basis of distribution, that is to say:—

(a.) There shall be paid in every financial year to the police authority of every such police force a sum equal to the amount of the rateable deductions made during the year ending the twenty-ninth day of September last preceding the end of the financial year from the pay of the constables belonging to that force, and that sum shall be carried to the pension fund.

(b.) The residue shall at the same time be distributed among the police authorities of those forces in proportion to the amounts paid during the year ending the twenty-ninth day of September last preceding the end of the financial year in respect of pensions, allowances, and gratuities out of their pension funds respectively, and the proportion to be paid to each force shall be carried to the pension fund.

(2.) Provided that a police authority shall not in respect of any year receive any payment under this section unless the Secretary of State gives a certificate that the management and efficiency of the police force under that authority and the administration of the pension fund of that force have during that year been satisfactory; and, if the Secretary of State withholds that certificate as regards any police authority, the amount which would otherwise be payable to that authority under this section shall be forfeited to the Crown and paid into the Exchequer.

(3.) Before any such certificate is finally withheld in respect of any police force, the Secretary of State shall communicate with the police authority of the force, and that authority may address any statement on the subject to the Secretary of State; and in every case in which the certificate is withheld a statement of the grounds on which the Secretary of State has withheld his certificate; together with any such statement of the police authority, shall be laid before Parliament.

(4.) The sums to be paid to each police authority under this section shall be certified by the Secretary of State, who may, if he thinks proper, vary his certificate, but unless it is so varied his certificate shall be conclusive.

(*f*) *I.e.*, 53 & 54 Vict. c. 60, s. 1 (1), *post*.

(5.) Where owing to any special circumstances affecting any particular police force the sum payable to that force under the foregoing provisions of this section would, in the opinion of the Secretary of State, be inequitable as between that force and some other force or forces, the Secretary of State may make such modification in the basis of distribution as appears to him to be necessary to meet the equities of the case. Sect. 17 (5).

(6.) The basis of distribution under this section may also be varied in such manner and in accordance with such conditions as may from time to time be set forth in regulations made by the Secretary of State and submitted to Parliament. All such regulations shall be laid on the table of both Houses of Parliament, and shall not come into operation until they have lain on the table of each House for not less than thirty days on which that House has sat.

(7.) This section shall come into operation on the passing of this Act.

Accounts and investment of pension fund.

18.—(1.) All sums which, in pursuance of this Act, are to be carried to the pension fund of a police force shall be accounted for and paid to the treasurer of that fund (*g*) in such manner as the police authority may direct, and may be dealt with as annual income of the pension fund.

(2.) The pension fund of a police force shall be kept as a separate fund, but the treasurer of the police fund shall be the treasurer of the pension fund, and all enactments and regulations relating to the accounts of the police fund, and to the making up, audit, and publication thereof, and to the power of disallowance and otherwise shall, so nearly as circumstances admit, apply to the pension fund.

(3.) At the end of each financial year the surplus of the annual income of the pension fund above the expenditure thereout shall, as soon as may be, be invested in such name as the police authority direct, and in any manner authorised by law for investments by trustees (*h*), and all investments on account of the fund, under this section or otherwise, are in this Act referred to as the capital of the pension fund.

(4.) The capital of the pension fund shall not be applied for paying any sums payable out of that fund.

Guarantee of pension fund by police fund.

19.—(1.) If at any time the annual income of the pension fund is insufficient to pay the expenses of managing the fund, and the pensions, allowances, gratuities, and other sums payable thereout, the deficiency shall be supplied out of the police fund (*i*).

(2.) In the case of a county divided into districts within the meaning of section twenty-seven of the County Police Act, 1840, as 3 & 4 Vict. c. 88.

(*g*) In a county this officer will be the county treasurer. See s. 34, *post*.

(*h*) The Police Act, 1893, s. 5, *post*, enables the police authority to invest the capital of the pension fund in debentures or mortgages issued or made by a county council in pursuance of s. 69 of the Local Government Act, 1888, *ante*, p. 132.

(*i*) In a county the police fund is the county fund. See the Third Schedule, *post*.

Sect. 19 (2). amended by section four of the County and Borough Police Act, 1856, the deficiency shall be supplied by the several districts, as part of the local expenditure thereof, rateably in proportion to the number of constables appointed for each such district (*k*).

19 & 20 Vict. c. 69.

(3.) Where the police force of a borough has been consolidated with the police force of a county (*l*), the deficiency shall be supplied out of the police funds of the county and borough respectively in accordance with an agreement between the police authorities for the county and borough made in the same manner and subject to the same conditions as an agreement to consolidate the police force of a borough with the police force of a county can be made, and in default of any such agreement shall be supplied in such manner as may be determined by an arbitrator appointed by the Secretary of State.

(4.) Where the rate which can be levied for the police fund is limited, an addition to that rate may be levied for the purpose of raising the sum required to supply the deficiency.

Power for police authority to make regulations.

20.—(1.) Every police authority may make regulations consistent with this Act with respect to the deductions from a constable's service for sickness, misconduct, or neglect of duty, and with respect to stoppages of pay during sickness and fines for misconduct, and with respect to the mode in which pensions are to be paid, and otherwise for the purpose of giving effect to be provisions of this Act.

(2.) All regulations for a police force made before the commencement of this Act with respect to any of the above matters shall have effect as if made under the powers given by this section.

Power to return rateable deductions on leaving force.

21. If a constable not having been dismissed leaves a police force without a pension or gratuity, the police authority may, if it seems to them just, pay him the whole or part of the rateable deductions which have been made from his pay; but this section shall not apply in the case of his being removed to another force under such circumstances as will enable him to reckon his approved service in the force from which he removes.

Provisional orders by Secretary of State.

22.—(1.) Where it appears to a police authority that the assets of their pension fund exceed the amount required for meeting the liabilities thereon, and that it is expedient to provide for the application of the excess or any part thereof, the police authority may apply to the Secretary of State, and thereupon the Secretary of State may frame and submit to Parliament for confirmation a provisional order authorizing the payment out of the pension fund

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(*k*) Under 3 & 4 Vict. c. 88, s. 27, a county may be divided into police districts in cases where the number of constables needed is different in different parts of the same county, and each district pays for its own constables. The 19 & 20 Vict. c 69, s. 4, enables the Queen in Council on petition to order a county to be divided into districts.

(*l*) *I.e.*, under 19 & 20 Vict. c. 69, s. 5.

of such sums, for such purposes, during such period, and subject to such conditions as may seem expedient. Sect. 22 (1).

(2.) Where it appears to a police authority that by reason of their pension fund being sufficient to meet the liabilities thereon it is unnecessary to make any further investments on account of the capital thereof, the police authority may apply to the Secretary of State, and thereupon the Secretary of State may frame and submit to Parliament for confirmation a provisional order authorizing the discontinuance of those investments.

(3.) Where a local Act provides for the payment to members of a special force in any police area of the same pension, superannuation, or other allowances or gratuities as are by that local Act provided for the police force of the area, the authority controlling the special force may apply to the Secretary of State, and thereupon the Secretary of State may frame and submit to Parliament for confirmation a provisional order providing—

(i.) for the adjustment of any financial relations existing at the commencement of this Act between the police force and the special force as regards the payment of pensions, allowances, and gratuities to members of those forces respectively; and

(ii.) for applying with or without modification all or any of the provisions of this Act to the special force.

(4.) A provisional order under this section shall be of no force unless and until it is confirmed by Act of Parliament, but when so confirmed shall have effect with any modifications made therein by Parliament.

(5.) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to that order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(6.) All costs charges and expenses incurred by the Secretary of State in relation to any order under this section shall be defrayed by the authority applying for the order.

(7.) For the purposes of this section the expression "special force" means a fire brigade, fire police, or other like force.

PART II.

General Amendment of Acts.

23.—(1.) Every police authority may from time to time, and shall at least once in every five years, submit for approval to a Secretary of State a table of fees payable to constables in respect of the service of summonses, the execution of warrants, and the performance of other occasional duties which may be required of the constables under that authority, and in respect of the performance of any other act done by constables in the execution of their duty, Table of fees.

Sect. 23 (1).

and the Secretary of State may approve of the table, with or without modification.

(2.) Every police authority shall also provide for those fees being duly accounted for and being duly paid to the treasurer of that authority, and those fees shall, subject to the provisions of this Act, be applied in manner provided by the enactments relating to the police force of that authority, and so far as those enactments do not extend, then in aid of the police fund of that authority.

(3.) A constable may receive any fee mentioned in a table for the time being approved not more than five years previously by a Secretary of State, but no other fee shall be taken by a constable for any service performed by him.

(4.) Every constable shall duly account in accordance with the provisions made as above mentioned for any fee taken by him.

Amendment of 22 & 23 Vict. c. 32, s. 24, as to amount of gratuity.

24. So much of the County and Borough Police Act, 1859, as limits the amount of the gratuity which may be granted as a reward for a meritorious act done by a constable in the execution of his duty is hereby repealed (*m*).

Assistance by one police force to another.

25.—(1.) Where a police authority deem it expedient for any special emergency or under any exceptional circumstances to strengthen their police force (in this section referred to as the aided force) by constables belonging to another police force, such number of constables belonging to the latter force may be added to the aided force, and for such period, as may be agreed on between the police authorities of the forces; and the constables so added, notwithstanding that they have not been sworn in or taken any declaration as constables of the aided force, shall, during that period, be deemed, save as otherwise provided by the agreement, to be for all purposes constables of the aided force, and shall have the like powers, duties, and privileges (*n*).

(2.) The agreement may be made for a particular occasion or as a standing agreement, and with reference either to recurring or to unforeseen events, or otherwise, as may be thought expedient.

(3.) Any power conferred on a police authority by this section or by any agreement made thereunder may (subject to anything in the agreement to the contrary) be delegated by that authority to their chief officer of police by any general or special order, and with or without any exceptions, restrictions, or conditions.

(4.) An agreement under this section may contain such terms as to the command of the constables added to the aided force, and as

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(*m*) Under 22 & 23 Vict. c. 32, s. 24, the amount was limited to 3*l*.

(*n*) The county council are bound to pay to a borough council in respect of an aiding force brought into the borough under this sub-section, one half of the cost of the pay and clothing of such aiding force, under the Local Government Act, 1888, s. 24, sub-s. (2) (*j*). *R.* v. *West Riding of Yorkshire*, [1895] 1 Q. B. 885; 64 L. J. M. C. 145; 72 L. T. (N.S.) 520; 43 W. R. 386; 59 J. P. 340.

to the expenses (including the pay and allowances of the constables so added and provision for pensions, gratuities, and allowances in the event of those constables being killed or injured) and otherwise, as may seem expedient. Sect. 25 (4).

(5.) An agreement may be made by a police authority with more police authorities than one.

Declaration by constables respecting previous service.

26. A police authority may require every constable at the time of his appointment to appear before a justice of the peace, and make and sign a declaration as to his previous service in a police force or public employment, in the form contained in the Second Schedule to this Act, or to the like effect; and if any constable knowingly makes a false declaration, he shall be liable, on summary conviction, to be imprisoned, with or without hard labour, for any period not exceeding three months.

Computation of annual value in certain cases for the purpose of the metropolitan police.

27. Whereas the annual value of property on which contributions for the purposes of the metropolitan police force are calculated is required to be computed according to the last valuation for the time being acted upon in assessing the county rate, and in some cases since the passing of the Local Government Act, 1888, there may be no such valuation: Be it therefore enacted that in the case of any area for which there is no such valuation, the valuation for the purpose of the said computation shall be such as is from time to time agreed upon between the receiver for the metropolitan police district and the rating authority, whether overseers or others, of the said area, or in default of agreement, as may be determined by arbitration of the Local Government Board, and the provisions of the Local Government Act, 1888, respecting the determination of differences by arbitration of the Local Government Board shall apply accordingly (*o*).

In the case of any contribution made or required before the commencement of this Act, the receiver and rating authority may agree to adjust the amount according to any valuation made in pursuance of this section, or such other valuation as they may agree under all the circumstances to be just.

Provision as to special constables.

28.—(1.) Where in pursuance of the Act of the session held in the first and second years of King William the Fourth, chapter forty-one, intituled "An Act for amending the laws relative to the appointment of special constables, and for the better preservation of the peace," a special constable is appointed by a justice or justices exercising jurisdiction in any part of the metropolitan police district, he shall have all the powers of a constable throughout the whole of the metropolitan police district and the city of London, and the provisions of that Act shall apply to him as if the metropolitan police district were one county; and the allowances and

(*o*) See the Local Government Act, 1888, s. 63, *ante*, p. 121, and 59 Vict. c. 9, *post*.

Sect. 28 (1).

expenses mentioned in section thirteen of that Act may, if the Secretary of State so directs, be paid out of the metropolitan police fund.

(2.) Where in pursuance of the same Act a special constable is appointed by a justice or justices having jurisdiction in the city of London, he shall have the powers of a constable throughout the whole of the metropolitan police district.

Provision as to receiver of metropolitan police district.

29. It shall not be necessary for the receiver for the time being of the metropolitan police district to give security for the faithful performance of his duty, and any security already given for this purpose shall cease to be in force.

PART III.

Temporary and Supplemental Provisions.

Application of Act to existing funds and constables.

30. For the purpose of adapting the provisions of Part One of this Act to existing pension or superannuation funds and existing constables (that is to say, to constables appointed to police forces, and to the pension or superannuation funds established for those forces, before the commencement of this Act, whether under any general or local Act, or otherwise) the following provisions shall have effect:

(1.) As soon as may be after the commencement of this Act, the amount of every existing pension or superannuation fund of a police force shall, where it is not already held by the treasurer of the police fund of that force, be transferred by the persons holding the same to such persons as the police authority may direct, to be held and dealt with as part of the pension fund under this Act, and as part of the capital or income thereof, as the case may require:

(2.) Where the Exchequer contribution to the police authority of a police force becomes payable before any existing fund of the force which is required to be so transferred is so transferred, or, in the case of a police force not having any such fund, before a pension fund is established for the force in pursuance of this Act, the payment of the contribution shall be deferred until the Secretary of State has certified that the fund is so transferred or established:

(3.) Where the police force of a borough has been consolidated with the police force of a county, and the existing pension or superannuation fund of the police force of the borough has not been transferred to the county treasurer, that fund shall be transferred in accordance with the foregoing provisions of this section, as soon as may be after the commencement of this Act, by the persons holding the same, and, in the absence of any agreement between the police authorities for the county and borough, the income

of that fund shall be applied in paying the superannuation and other allowances charged thereon at the date of the transfer, and, subject thereto, in paying the pensions, allowances, and gratuities to constables employed in the consolidated force, and their widows and children, in such manner as may be determined by an arbitrator appointed by the Secretary of State :

(4.) In Lincolnshire section twenty-two of the County and Borough Police Act, 1859, and sections six, seven, and eight of the Police Superannuation Act, 1865, as amended by the Lincolnshire Police Superannuation Act, 1888, shall, so far as is consistent with the tenor thereof, apply to the pension fund under this Act in like manner as if it were the superannuation fund in those sections mentioned : 22 & 23 Vict. c. 32. 28 & 29 Vict. c. 35. 51 Vict. c. ix.

(5.) Every police authority shall, within fourteen days after a pension scale has been adopted by or framed for the police authority in pursuance of this Act, cause written notice to be given to every constable in the police force under that authority, requiring him to inform that authority in writing before the date of the commencement of this Act, whether he does or does not accept the provisions of this Act in lieu of the existing enactments respecting superannuation :

(6.) This Act shall not apply to any existing constable who, before the date of the commencement of this Act, whether any such notice has or has not been given to him, declines in writing to accept the provisions of this Act ; but save as aforesaid this Act shall apply to all existing constables ; and those constables shall be deemed to have surrendered in favour of the police authority all right to any provision made before the commencement of this Act, either wholly or partly, by the police authority for the superannuation of such constables, or, in case of their death, for their widows and children or any of them, whether that provision is made by an annual allowance, insurance, or otherwise :

(7.) If by reason of the police authority not having given such notice as aforesaid an existing constable becomes entitled to a less pension than he would have been entitled to receive if this Act had not passed, he may apply to the police authority, and the police authority may make such order as may seem just for the purpose of preventing the constable from suffering any loss by reason of the notice not having been given :

(8.) In the case of any existing constable to whom this Act applies, his approved service for any period before the commencement of this Act in the force in which he is serving at the time of his retirement shall be reckoned as approved service ; and his service for not less than three years either wholly or partly before the commencement of

Sect. 30 (8).

this Act in any police force in any part of the United Kingdom from which he removed with the sanction of the chief officer or police authority of that force to another force, shall (notwithstanding the sanction was not given in writing) be reckoned as approved service for the said period in the last-mentioned force, unless the police authority who give him the notice respecting the acceptance of this Act, inform him in writing at the time of such notice that they refuse to allow the said service to be reckoned, but their refusal shall not prevent the reckoning of that service under any other provision of this section :

(9.) Any description of service before the commencement of this Act, either in a police force or otherwise, which any existing constable to whom this Act applies is at the commencement of this Act entitled to reckon as service for any period towards superannuation out of the existing pension or superannuation fund of his police force, and which is not reckoned under any other provision of this Act, shall be reckoned for the same period for the purposes of pension under this Act: In the case of any existing constable to whom this Act applies, who has served not less than ten years before the commencement of this Act in a police force in which the police authority have heretofore, under the provisions of former Acts, granted pensions of higher amount than authorised by the scale adopted by that police authority under the provisions of this Act, and who becomes entitled to a pension under this Act, then, notwithstanding anything in this Act, the pension may, if the police authority think fit, exceed the amount prescribed in the adopted scale so as it does not exceed the amount which might have been granted if this Act had not passed :

(10.) Provided that if, in the case of any existing constable, rateable deductions or other payments towards superannuation or insurance have not, during the period of the service which he is entitled to reckon for the purpose of calculating his pension under this Act, or for some part of such period not less than ten years, been made, and contributions have not been made from other sources to a superannuation fund in lieu of the rateable deductions not so made, the pension granted under this Act to such constable may, if the police authority think fit, be reduced by an annual amount equal to such deferred annuity as could, according to the tables for the purchase of deferred annuities from the Commissioners for the Reduction of the National Debt through the medium of the Post Office, have been purchased by rateable deductions made at the rate fixed under this Act during the said period of service, or the part thereof during which such deductions or payments were not made.

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Act to supersede local Acts.

31. The provisions of this Act shall have effect, notwithstanding anything in any other Act, general or local, to the contrary.

Application of Act to metropolitan police.

32. This Act shall apply to the metropolitan police force, subject as follows :—

(1.) Anything authorised or required to be done by a resolution or other act of the police authority may be done by any instrument signed by a Secretary of State :

(2.) Anything authorised or required to be done with the approval of a Secretary of State, or by a Secretary of State on the submission or application of a police authority, may be done by a Secretary of State alone :

(3.) The court of quarter sessions to which an application is to be made with respect to a decision as to a pension or allowance shall be the court of quarter sessions for the county of London :

(4.) Nothing in this Act shall apply to any existing constable who acted as one of the police of any of Her Majesty's dockyards, and upon his transfer to the metropolitan police force did not accept the terms of superannuation of members of that force, or agree to allow the deductions to be made from his pay which have been made towards such superannuation from the pay of other members of that force ; and any such constable shall be entitled to superannuation under the Superannuation Act, 1859, notwithstanding that he obtained no certificate from the Civil Service Commissioners : 22 Vict. c. 26.

(5.) The rate and conditions of pension of the chief commissioner of metropolitan police, and of the assistant commissioners of metropolitan police shall be regulated by the provisions of this Act, and not by the provisions of the Metropolitan Police Staff (Superannuation) Act, 1875, but the said chief commissioner and assistant commissioners shall be entitled to pension under the provisions of this Act in respect of any emoluments in respect of which they are entitled to a superannuation allowance made under the Metropolitan Police Staff (Superannuation) Act, 1875. 38 & 39 Vict. c. 28.

(6.) The rateable deductions from the salary of the chief commissioner of metropolitan police and from the salaries of such of the assistant commissioners of metropolitan police as receive salaries from money provided by Parliament shall be paid into the Exchequer and not to the pension fund.

(7.) The existing chief commissioner and assistant commissioners of metropolitan police shall be deemed existing constables within the meaning of this Act.

Police areas and authorities.

33. In this Act, unless the context otherwise requires,—

The expression "police area" means one of the areas set forth in the first column of the Third Schedule to this Act ; and the expressions "police authority," "chief officer of police,"

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and "police fund," mean, as respects each police area, the authority, officer, and fund respectively mentioned opposite to that area in the second, third, and fourth columns of that schedule; and the expression "police force" means a force maintained by one of the police authorities mentioned in the said schedule:

Provided as follows:—

(1.) In the case of a county the powers of the police authority under this Act with respect to the accounting for and payment of sums to be carried to the pension fund or police fund, and with respect to investments, shall be exercised by the county council, and any sum payable under this Act by the police authority shall be payable by the county council on the requisition of the standing joint committee of the quarter sessions and the county council;

(2.) Any contributions required to meet payments out of the county fund for the purposes of this Act shall be assessed in like manner as contributions to meet the expenses of the police force;

(3.) The exercise of the powers conferred by this Act on the watch committee of a borough shall be subject to the approbation of the council of the borough.

Definitions

34. In this Act, unless the context otherwise requires,

The expression "treasurer" includes any receiver, chamberlain, or other officer, by whatever name known, who performs the duties of treasurer in relation to any police fund:

The expression "fine" includes a pecuniary penalty:

The expression "fee" does not include any reward paid to an individual constable by direction of the Admiralty, or of any military authority, or of a Secretary of State not acting as the police authority, or any gratuity paid to a constable for a meritorious act done in the execution of his duty.

Saving for existing pensions.

35. Notwithstanding anything in this Act or in any repeal by this Act every person in receipt of any pension, superannuation, or other allowance at the commencement of this Act shall continue to be entitled to receive the same, subject to the same limitations and conditions as before the commencement of this Act, and the same shall not be altered under this Act, and shall, save as otherwise expressly provided by this Act, be paid out of the like funds, as nearly as may be, as if this Act had not passed.

Repeal.

36. The Acts mentioned in the Fourth Schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned, and so much of any other Act as regulates the superannuation of any police force in England and Wales, or is inconsistent with this Act, is also hereby repealed:

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Provided that—

(1.) This repeal shall not affect the right of any police authority to grant any pension or superannuation or other allowance or gratuity to any existing constable to whom this Act does not apply, or to the widow and child of any such constable, or either of them, and shall not affect the right of any such constable, widow, or child to claim such pension, or superannuation or other allowance or gratuity, and any such pension, allowance or gratuity may be granted and claimed accordingly, and the claim shall be allowed as if this Act had not passed, but the pension, allowance, or gratuity shall be paid out of the pension fund:

(2.) This repeal shall not prevent any constable from reckoning as approved service any service which he is entitled under any enactment hereby repealed to reckon towards pension or superannuation:

(3.) Any table of fees made in pursuance of any enactment hereby repealed shall continue in force in like manner as if it had been at the date of the commencement of this Act approved by the Secretary of State in pursuance of this Act:

(4.) Nothing in this section shall repeal any enactment so far as it relates to any fire brigade, fire police, or other force to which or to the members whereof the provisions of this Act do not apply.

Commencement of Act.

37. This Act shall come into operation on the first day of April one thousand eight hundred and ninety-one, except as to anything which is by this Act required or authorised to be done before that date, and except as to any provision which is expressed to come into operation on the passing of this Act.

Short titles.

38.—(1.) This Act may be cited as the Police Act, 1890.

(2.) The Acts mentioned in the Fifth Schedule to this Act are in this Act referred to and may be cited by the short titles respectively in that schedule mentioned, and may be cited collectively by the short title at the commencement of that schedule mentioned.

(3.) The Metropolitan Police Acts, 1829 to 1887, and this Act may be cited together as the Metropolitan Police Acts, 1829 to 1890.

(4.) The Acts mentioned in the said Fifth Schedule and this Act may be cited together as the Police Acts, 1839 to 1890 (*p*).

Act not to apply to City.

39. This Act shall not apply to the City of London Police

Extent of Act.

40. This Act shall not extend to Scotland or Ireland.

(*p*) To these must be added the Police Act, 1893; all may be cited together as the Police Acts, 1839 to 1893.

Schedules.

Section 3.

SCHEDULES.

FIRST SCHEDULE.

Pension Scale.

Part I.

Ordinary Pensions.

(1.) The pension to a constable on retirement shall be within the maximum and minimum limits following; that is to say,

(a) if he has completed fifteen but less than twenty-one years approved service, an annual sum not less than one sixtieth nor more than one fiftieth of his annual pay for every completed year of approved service; and

(b) if he has completed twenty-one but less than twenty-five years approved service, an annual sum not less than twenty sixtieths nor more than twenty fiftieths of his annual pay, with an addition of not less than two sixtieths and not more than two fiftieths of his annual pay for every completed year of approved service above twenty years; and

(c) if he has completed twenty-five years approved service, an annual sum not less than thirty sixtieths nor more than thirty-one fiftieths of his annual pay, with an addition of not less than one sixtieth nor more than three fiftieths of his annual pay for every completed year of approved service above twenty-five years, so however that the pension shall not exceed two thirds of his annual pay.

(2.) Where a limit of age is fixed below which a constable is not to be entitled to retire on a pension without a medical certificate, it shall be not less than fifty years and not more than fifty-five years, or in the case of a constable above the rank of sergeant, not more than sixty years, but it shall not be obligatory on a police authority to fix any such limit.

Part II.

Maximum of Gratuity to Constable.

(3.) Any gratuity on retirement to a constable who is incapacitated for the performance of his duty shall not exceed the amount of one month's pay for every completed year of approved service.

Special Pensions.

(4.) The pension to a constable who is incapacitated for the performance of his duty by infirmity of mind or body occasioned by an injury received in the execution of his duty without his own default, shall vary according as the injury is or is not accidental, and according as the constable is partially or totally disabled from earning his livelihood.

(5.) The amount of pension in such cases shall be in the discretion of the police authority but within the maximum and minimum limits following:—

Scale A.

If the injury is accidental and the constable is partially disabled (*q*)—

(a) if he has completed not more than five years approved service, an annual sum not greater than ten fiftieths and not less than ten sixtieths of his annual pay;

(*q*) Provision is made by the Police Act, 1893, s. 3, *post*, for the increase of a pension where a partial disablement afterwards becomes total.

(b) if he has completed more than five and not more than ten years approved service, an annual sum not greater than twelve fiftieths and not less than twelve sixtieths of his annual pay ;

(c) if he has completed more than ten and not more than fifteen years approved service, an annual sum not greater than fifteen fiftieths and not less than fifteen sixtieths of his annual pay ; and

(d) if he has completed more than fifteen years approved service, an annual sum not greater than the maximum pension and not less than the minimum pension authorised under Article (1) of this schedule.

Scale B.

If the injury is accidental and the constable is totally disabled—

(a) if he has completed not more than ten years approved service, an annual sum not greater than fifteen fiftieths and not less than fifteen sixtieths of his annual pay ;

(b) if he has completed more than ten and not more than fifteen years approved service, an annual sum not greater than twenty fiftieths and not less than twenty sixtieths of his annual pay ;

(c) if he has completed more than fifteen years approved service, an annual sum not greater than the maximum pension authorised under Article (1) of this schedule, with an addition equal to five fiftieths of his annual pay, and not less than the minimum pension authorised under the same Article, with an addition equal to five sixtieths of his annual pay, provided that the pension shall not exceed two thirds of his annual pay.

Scale C.

If the injury is not accidental and the constable is partially disabled—

(a) if he has completed not more than ten years approved service, an annual sum not greater than twenty fiftieths and not less than twenty sixtieths of his annual pay ;

(b) if he has completed more than ten and not more than fifteen years approved service, an annual sum not greater than twenty-five fiftieths and not less than twenty-five sixtieths of his annual pay ;

(c) if he has completed more than fifteen years approved service, an annual sum not greater than the maximum pension authorised under Article (1) of this schedule, with an addition equal to ten fiftieths of his annual pay, and not less than the minimum pension authorised under the same Article, with an addition equal to ten sixtieths of his annual pay, provided that the pension shall not exceed two thirds of his annual pay.

Scale D.

If the injury is not accidental and the constable is totally disabled—

A sum not exceeding full pay and not less than the maximum amount prescribed by Scale C.

Pensions Allowances and Gratuities to Widow and Children.

(6.) Where a constable without his own default loses his life from the effect of an injury received in the execution of his duty, the pension to his widow and the allowances to his children shall be according to the following scale :—

(a.) The pension to the widow shall be an annual sum of fifteen pounds ;

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(b.) The allowance to each child shall be an annual sum of two pounds ten shillings :

Provided that the police authority may, in the case of a constable of a rank higher than that of sergeant, increase the above amounts, so however that the pension for a widow of an inspector do not exceed the annual sum of twenty-five pounds, and the pension for a widow of an officer of a rank higher than that of inspector do not exceed thirty pounds, and the allowance for a child of a constable of a rank higher than that of sergeant do not exceed the annual sum of five pounds.

(7.) Where a constable dies under circumstances which do not entitle his widow and children to a pension or allowance under the preceding article of this schedule, any gratuities to the widow and children shall not exceed in the whole the amount of one month's pay for every completed year of approved service of the deceased constable.

(8.) The gratuities granted to the widow and children of a constable who dies within twelve months after the grant of a pension shall not exceed in the whole the difference between the annual pay of the constable and the amount he has actually received in respect of his pension.

Part III.

General Rules.

(9.) The pension to a widow shall continue only while she remains a widow and is of good character.

(10.) The allowance to a child shall not continue after the child attains the age of fifteen years.

(11.) In estimating any pension, gratuity, or allowance for the purposes of this Act—

(a) a pension or gratuity to a constable shall be calculated according to the amount of his annual pay at the date of his retirement ;

(b) a pension or gratuity to the widow and an allowance or gratuity to a child of a constable shall be calculated according to the amount of the constable's annual pay at the date of his death ;

(c) but *where a constable has, in the course of the three years next before the date of his retirement or death, been in more than one rank* (*r*), his annual pay at the date of the retirement or death shall be deemed to be the average annual amount of pay received by him for the said three years, instead of the annual amount actually received by him at that date.

Section 26.

SECOND SCHEDULE.

Declaration.

*Insert according to the circumstances.

I, *A. B.*, now residing in the parish of in the county of , solemnly and sincerely declare that I have* never served in any police force in Great Britain, nor in the Royal Irish Constabulary, nor in the Royal Navy, nor in Her Majesty's army, nor in the militia, nor under the Post

(*r*) The words in italics are repealed, and the following words substituted for them by the Police Act, 1893 (56 & 57 Vict. c. 10), s. 6 : "Where a constable at the date of his retirement or death holds a rank to which he has been promoted within the three years previous." The effect of this is that if a constable has been reduced in rank, his pension will be calculated with reference to his pay at the date of his retirement, and this applies to a constable who is bound by the Act of 1890 who retires after 1893. *Ruff* v. *Secretary of State for the Home Department*, 60 J. P. 343.

Office, nor under any public department [*or* that I have served in the police force for years, from to , and in Her Majesty's army for years from to , and am now in the Army Reserve, but have not served in the Royal Irish Constabulary nor in the Royal Navy, nor in the militia, nor under the Post Office, nor under any public department, *or as the case may be*]. **Schedules.**

Declared before me.

(Signed) *A. B.*

At the day of 18 .

THIRD SCHEDULE.

Section 33.

POLICE AREAS AND AUTHORITIES.

Police Area.	Police Authority.	Chief Officer of Police.	Police Fund.
The Metropolitan Police District.	One of Her Majesty's Principal Secretaries of State.	The commissioner of police of the metropolis.	The funds applicable for defraying the expenses of the metropolitan police force.
A county - - -	The standing joint committee of the quarter sessions and the county council.	The chief constable -	The county fund.
A borough - - -	The watch committee.	The chief or head constable.	The borough fund or borough rate or any fund or rate applicable under any local Act for the expenses of the police force.
A town not being a borough and maintaining a separate police force under any local Act of Parliament.	The authority having the management of the police under the local Act.	The head constable or other officer by whatever name called having the chief command of the police.	The fund or rate applicable under the local Act for the expenses of the police force.
The river Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners.	The Tyne Improvement Commissioners.	The superintendent or other officer having the chief command of the police.	The tonnage rates and dues and other sums applicable under the Acts relating to the improvement of the river Tyne for the expenses of maintaining the police force.

In this schedule the expression "county" means an administrative county within the meaning of the Local Government Act, 1888, but does not include a county borough.

Such parts of any county as are within the Metropolitan Police District, or as form part of any other police area, shall not be deemed for the purposes of this Act to form part of the county police area.

FOURTH SCHEDULE.

Section 36.

ACTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
10 Geo. 4, c. 44. - -	An Act for improving the police in and near the metropolis.	In section ten, from "and the receiver for the time being," where those words first occur, to "paid to him under this Act."
2 & 3 Vict. c. 47. - -	The Metropolitan Police Act, 1839.	Sections twenty-two and twenty-three.

Schedules.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
2 & 3 Vict. c. 71. - -	An Act for regulating the police courts in the metropolis.	In section forty-six, the words "which "shall be appled towards defraying "the charge of maintaining the "police of the metropolis."
3 & 4 Vict. c. 88. - -	An Act to amend an Act for the establishment of county and district constables.	Sections ten, eleven, and seventeen.
19 & 20 Vict. c. 69. -	An Act to render more effectual the police in counties and boroughs in England and Wales.	Sections eight, ten, eleven, thirteen, twenty-seven, twenty-eight, and twenty-nine.
20 & 21 Vict. c. 64. -	The Metropolitan Police Act, 1857.	Section fifteen.
22 & 23 Vict. c. 32. -	An Act to amend the law concerning the police in counties and boroughs in England and Wales.	Sections eight, nine, ten, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-three, and twenty-eight, and in section twenty-four the words "not exceeding three pounds."
24 & 25 Vict. c. 124. -	The Metropolitan Police Act, 1861.	Section six.
28 & 29 Vict. c. 35. -	The Police Superannuation Act, 1865.	Section two, except so far as it relates to the County and Borough Police Act, 1859; and sections three, four, five, and nine.
45 & 46 Vict. c. 50. -	The Municipal Corporations Act, 1882.	Fifth Schedule, Part II., 5 (*b*) from "or as may be awarded" down to "length of service."

Section 38.

FIFTH SCHEDULE.

THE POLICE (ENGLAND) ACTS.

Session and Chapter.	Title.	Short Title.
2 & 3 Vict. c. 93. -	An Act for the establishment of county and district constables by the authority of justices of the peace.	County Police Act, 1839.
3 & 4 Vict. c. 88. -	An Act to amend the Act for the establishment of county and district constables.	County Police Act, 1840.
19 & 20 Vict. c. 69. -	An Act to render more effectual the police in counties and boroughs in England and Wales.	County and Borough Police Act, 1856.
20 Vict. c. 2. - -	An Act to facilitate the appointment of chief constables for adjoining counties, and to confirm appointments of chief constables in certain cases.	County Police Act, 1857.
22 & 23 Vict. c. 32. -	An Act to amend the law concerning the police in counties and boroughs in England and Wales.	County and Borough Police Act, 1859.
28 & 29 Vict. c. 35. -	An Act to amend the law relating to the police superannuation funds in counties and boroughs.	Police Superannuation Act, 1865.

45 & 46 Vict. c. 50. Sections one hundred and ninety to one hundred and ninety-four (both inclusive) of the Municipal Corporations Act, 1882, shall for the purposes of this Act be deemed to form part of the Acts in this schedule.

LOCAL TAXATION (CUSTOMS AND EXCISE) ACT, 1890.

(53 & 54 Vict. Cap. 60.)

An Act for the Distribution and Application of certain Duties of Customs and Excise; and for other purposes connected therewith.

[18th August, 1890.]

Whereas certain local taxation (customs and excise) duties have by an Act of the present session (*s*) been directed to be paid to the same local taxation accounts as the local taxation probate duty, and it is expedient to provide for the distribution and application of the duties so paid:

* * * * *

Application of English share of customs and excise duties.

1.—(1.) Out of the English share of the local taxation (customs and excise) duties paid to the local taxation account on account of any financial year—

(a.) The sum of three hundred thousand pounds shall be applied for such purposes of police superannuation in England as hereinafter mentioned (*t*);

(b.) The residue shall, unless Parliament otherwise determines, be distributed between county and county borough funds, and carried to the Exchequer contribution accounts of those funds respectively, and applied under the Local Government Act, 1888, as if it were part of the English share of the local taxation probate duty, and shall be the subject of an adjustment between counties and county boroughs, according to section thirty-two of the said Act, by the Commissioners under that Act (*u*). 51 & 52 Vict. c. 41.

(2.) The council of any such county or county borough may contribute any sum received by such council in respect of the residue under this section, or any part of that sum, for the purposes of technical education (*x*) within the meaning of the Technical Instruction Act, 1889 (*y*), and may make that contribution over and above any sum that may be raised by rate under that Act.

(*s*) This Act is the 53 & 54 Vict. c. 8, s. 7, *ante*, p. 485.

(*t*) See s. 4, *post*. As to the distribution of the money by police authorities, see the Police Act, 1890, s. 17, *ante*, p. 498.

(*u*) As to the English share of the local taxation probate duty, see the Local Government Act, 1888, ss. 21—24, *ante*, p. 48.

It is provided by 54 Vict. c. 4, s. 2, *post*, that any moneys received by a county council under this clause, and directed by resolution to be appropriated or set aside for the purposes of technical or manual instruction, shall, although not expended or specifically contributed or allotted in whole or in part before the end of the financial year, remain applicable for such purposes, and shall not be applied in manner provided by s. 23, sub-ss. (2)—(10), of the Local Government Act, 1888, until the county council shall have made an order for such application.

(*x*) This includes both technical and manual instruction within the meaning of the Technical Instruction Acts, 1889 and 1891 (54 Vict. c. 4, s. 3), *post*.

(*y*) 52 & 53 Vict. c. 76, *ante*, p. 435.

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(3.) A county council may make any such contribution by giving the amount of the contribution or any part of that amount to any town council or other urban sanitary authority in their county for the purpose of the same being applied by such council or authority under the Technical Instruction Act, 1889, over and above any sum which can be raised under that Act by rate by such council or authority (*z*).

52 & 53 Vict. c. 76.

(4.) The council for any county to which the Welsh Intermediate Education Act, 1889 (*a*), applies may contribute any sum received by such council under this section in respect of the said residue or any part of that sum towards intermediate and technical education under that Act, in addition to the amount which the council can under that Act contribute for such education.

52 & 53 Vict. c. 40.

* * * * *

Distribution of sums for police superannuation in England and Scotland.

4.—(1.) Out of the annual sum applicable under this Act for police superannuation in England one hundred and fifty thousand pounds shall be paid to the receiver for the Metropolitan police district, and applied in aid of the police superannuation fund for the Metropolitan police force.

(2.) The remaining half of the said annual sum shall be distributed among the police authorities of the other police forces in England other than the police force of the city of London . . . . (*b*), and the amounts to be so distributed shall be distributed and applied towards the superannuation of the police forces in such manner and in accordance with such conditions and regulations as may be provided by or in pursuance of any Act hereafter passed, and until so distributed and applied shall remain to the credit of the local taxation accounts.

Distribution of local taxation (customs and excise) duties.

51 & 52 Vict. c. 41.

5. All sums paid in respect of the local taxation (customs and excise) duties to any local taxation accounts mentioned in section twenty-one of the Local Government Act, 1888 (*c*) . . . shall be paid and distributed by the like central authority as in the case of the local taxation probate duty, and the enactments relating to such distribution shall, subject to the express provisions of this Act, apply accordingly; the said accounts are in this Act referred to by the names given them in the said Acts.

* * * * *

Definitions.

6. In this Act, unless the context otherwise requires:—

The expression "local taxation probate duty" means the moiety of probate duties which under section twenty-one of the Local Government Act, 1888, ... is directed to be paid to the several local taxation accounts in England, . . .

(*z*) See s. 1, sub-s. (1) (g), of that Act, *ante*, p. 437.

(*a*) See that Act, *ante*, p. 423.

(*b*) In this and the following sections, clauses relating only to Scotland and Ireland are omitted. As to the distribution of the sums referred to, see s. 17 of the Police Act, 1890, *ante*, p. 498.

(*c*) *Ante*, p. 48.

The expression "central authority" means as respects England the Local Government Board; . . . Sect. 6.

7. This Act may be cited as the Local Taxation (Customs and Excise) Act, 1890. Short title.

ALLOTMENTS ACT, 1890.

(53 & 54 VICT. CAP. 65) (*d*).

An Act to provide for an Appeal from a Sanitary Authority failing to carry into effect the Allotments Act, 1887.

[18th August, 1890.]

* * * * *

1. This Act shall be construed as one with the Allotments Act, 1887 (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Allotments Acts, 1887 and 1890, and this Act may be cited as the Allotments Act, 1890. Construction and short title. 50 & 51 Vict. c. 48.

2.—(1.) Where such representation (*e*) as is authorised by section two of the principal Act has been made to the sanitary authority with respect to any district or parish, not being within the limits of Appeal to county council by persons

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(*d*) This Act enables a county council to take steps to provide allotments of land for the labouring population in any urban district or rural parish within their county where the district council have failed in a proper case to provide such allotments under the Allotments Act, 1887. The Act of 1887 and this Act are fully annotated in Mr. Brooke Little's "Law of Allotments"; they are also set out in "Lumley's Public Health." The procedure under these Acts has been affected in several important particulars by the Local Government Act, 1894, *post*.

(*e*) The representation must be made to the sanitary authority, viz., the district council, by any six registered parliamentary electors or ratepayers resident in an urban district or in some parish within a rural district, or (in the case of such a parish) by the parish council, and must state that the circumstances of the urban district or parish are such that it is the duty of the district council to take proceedings under the Allotments Act, 1887. See s. 2 of that Act and s. 6 (3) of the Local Government Act, 1894, *post*.

If the district council are of opinion that there is a demand for allotments for the labouring population in the urban district or parish, and that they cannot be obtained at a reasonable rent (as defined by the Act of 1887) and on reasonable conditions by voluntary arrangement, the district council are required by s. 2 of the Act of 1887, and subject to the provisions of that Act, to purchase or hire suitable land adequate to provide a sufficient number of allotments, and to let it in allotments to persons belonging to the labouring population resident in the district or parish and desiring to take it. They are not, however, to acquire land for allotments save at such price or rent that in their opinion all expenses incurred (except in making public roads) in relation to the allotments may reasonably be expected to be recouped out of the rents.

It is only after a representation has been made under the principal Act and has been ineffectual that a petition may be presented to the county council under the text. Such a petition may, in the case of a rural parish, be presented by the parish council as well as by the persons mentioned in this section. Local Government Act, 1894, s. 6 (3), *post*.

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a borough as defined by the Municipal Corporations Act, 1882, and any six persons qualified to make such representation consider that the circumstances of the district or parish are such as to make it the duty of the sanitary authority to take proceedings under that Act therein, and that the sanitary authority have failed to acquire land adequate and suitable in quality and position to provide a sufficient number of allotments, such persons may petition the county council of the county in which such district or parish is situate, stating the facts and requesting the council to put into force the principal Act for the purpose of providing a sufficient number of allotments for the district or parish.

(2.) The council, if satisfied by the inquiry hereinafter mentioned (*f*) that the circumstances are such that land for allotments should be acquired, shall pass a resolution to that effect, and thereupon the powers and duties of the sanitary authority under the principal Act, so far as regards that district or parish, shall be transferred from the sanitary authority to the county council, and the county council, in substitution for the sanitary authority, shall proceed to acquire land in accordance with the principal Act, and otherwise execute that Act in the said district or parish (*g*).

Provided that this section shall not affect the property in, or any powers or duties of the sanitary authority in relation to, any land which before the passing of the said resolution was acquired by the sanitary authority under the principal Act.

Standing committee.

3.—(1.) For the purposes of this Act or the principal Act every county council, as soon as is conveniently practicable after the passing of this Act, and annually thereafter at the meeting for the election of chairman, shall appoint under the Local Government Act, 1888, (*h*), a standing committee not exceeding one fourth of their whole body.

51 & 52 Vict. c. 41.

(2.) For the purpose of any business under this Act relating to any district or parish wholly or partly situate in an electoral division, the county councillor representing that division shall, if not already appointed, be an additional member of the committee.

(*f*) See s. 3, *post*.

(*g*) But where the land is purchased by the county council for allotments for a parish having a parish council, it is to be conveyed to that council, and the county council will not, it seems, be concerned with laying it out for allotments or with the letting and management of the allotments. See Local Government Act, 1894, s. 9 (14), *post*, which assigns these duties to the parish council. The procedure for the acquisition of land for allotments by a district council under the Act of 1887 is detailed in ss. 3 and 4 of that Act, under which compulsory powers may be obtained by a provisional order of the county council confirmed by Parliament. But a simple method of obtaining compulsory powers is provided by s. 9 of the Local Government Act, 1894, *post*. See also the orders of the Local Government Board, made under that section; Part IV. of this work, *post*.

(*h*) See the Local Government Act, 1888, ss. 28 (2), 75, *ante*, pp. 64, 141, and Municipal Corporations Act, 1882, s. 22, *ante*, p. 260.

(3.) Any petition under this Act shall as of course, and without any order of the council, be referred to the standing committee, who, on being satisfied of the bonâ fides of the application, shall forthwith cause a local inquiry into the circumstances to be made, and shall report the result to the council. Sect. 3 (3).

(4.) An inquiry under this Act or the principal Act shall be held by such one or more members of the standing committee, or such officer of the county council or other person as the standing committee may appoint to hold the same.

Supplemental provisions on council acquiring powers of sanitary authority.

4. Where the powers of the sanitary authority under the principal Act are, by virtue of this Act, transferred to the county council, the following provisions shall have effect—

(a.) The principal Act shall apply with the modifications necessa for giving effect to this Act:

(b.) The county council may borrow for the purposes of this Act subject to the conditions, in the manner, and on the security of the rate, subject to, in, and on the security of which the sanitary authority might have borrowed under the principal Act, if this Act had not been passed (*i*). The council shall have power to charge the said rate with the repayment of the principal and interest of the loan; and such loan with the interest thereon shall be repaid by the sanitary authority in like manner, and such charge shall have the like effect, as if the loan were lawfully raised and charged on that rate by the sanitary authority:

(c.) The county council shall keep separate accounts of all receipts and expenditure under this Act, and, in the application of sub-section six of section ten of the principal Act, the Local Government Act, 1888, shall be substituted for the Public Health Act, 1875 (*k*): 51 & 52 Vict c. 41. 38 & 39 Vict. c. 55.

(d.) The county council may make a provisional order for the purchase of land on the recommendation of the standing committee, without any petition from the sanitary authority, and the council shall be considered as the promoters of the order (*l*):

(e.) The county council may delegate to the sanitary authority any powers under section six, section seven, or section eight of the principal Act (which sections relate to the management of the allotments, and the letting and use thereof, and the recovery of the rent and of possession

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(*i*) The borrowing powers of district councils for the purposes of the Allotments Act, 1887, are contained in s. 10 (4) and (5) of that Act, and ss. 233 to 244 of the Public Health Act, 1875. The security is in the case of an urban district, the district fund and general district rate; in the case of a rural parish, the special rate made in that parish.

(*k*) These accounts will therefore be audited as accounts of the county council under s. 71 of the Local Government Act, 1888, *ante*, p. 136.

(*l*) See note (*g*), *supra*, and s. 9 of the Local Government Act, 1894, *post*.

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thereof); and, subject to the terms of the delegation, all expenses and receipts arising in the exercise of the powers so delegated shall be paid and dealt with as expenses and receipts of the sanitary authority under the principal Act (*m*):

(f.) The county council, on the request of the sanitary authority, may, by order under their seal, transfer to that authority all or any of the powers, duties, property, and liabilities vested in and imposed on the council by virtue of this Act as regards the district of such authority or any part thereof, and the property so transferred shall be deemed to have been acquired by that authority under the principal Act, and that authority shall act accordingly (*m*).

Use of school room free of charge.

5. Any room in a school receiving a grant out of moneys provided by Parliament may, except during ordinary school hours, be used free of charge for the purpose of an inquiry under this Act, or for the purposes of this Act by the county council or any committee appointed under this Act, or, with the consent of any two managers, for the purpose of holding public meetings to discuss any question relating to allotments under this Act or the principal Act, but any damage done to the room and any expense incurred by the person or persons having control over the room on account of its being so used shall be paid by the county council or by the persons calling the meeting.

Nothing in this section shall give any right to hold a public meeting in a schoolroom (a) unless not less than six days before the meeting a notice of the intention to hold the meeting on the day and at the time specified in the notice, signed by the persons calling the meeting, being not less than six in number, and being persons qualified to make a representation to the local authority under the principal Act, has been given, if the school is under a school board, to the clerk of the board, and in any other case to one of the managers of the school; nor (b) if the use of the schoolroom on the said day and at the said time has previously to the receipt of the notice of the meeting been granted for some other purpose; but in that case the clerk or manager, or some one on his behalf, shall forthwith after the receipt of the notice, inform in writing one of the persons signing it that the use of the school has been so granted for some other purpose, and name some other day on which the schoolroom can be used for the meeting.

If the persons calling the meeting fail to obtain the use of a schoolroom under this section, they may appeal to the standing committee under this Act, and the committee shall forthwith decide the

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(*m*) See note (*g*), *ante*, p. 518. Where the land is acquired for a rural parish and assured to the parish council under s. 9 (14) of the Local Government Act, 1894, the county council will not possess the powers referred to in clause (e) of this section, nor does it seem that they will have any powers, duties, property, or liabilities to transfer under clause (f).

appeal and make such order respecting the use of the room as seems just (*n*). Sect. 5.

6.—(1.) All expenses incurred by the county council in executing the principal Act or this Act in any district or parish on default of a sanitary authority, or incurred by the council in or incidentally to a local inquiry under this Act, shall be paid in the first instance out of the county fund as for general county purposes, and, unless defrayed out of moneys received by the council in respect of any land acquired under this Act otherwise than by sale or exchange, or out of money borrowed as before in this Act mentioned, shall when the powers and duties of the sanitary authority under the principal Act are transferred to the county council in pursuance of this Act, be repaid to the county council as a debt by the sanitary authority (*o*). Expenses.

(2.) All sums payable by a sanitary authority in pursuance of this Act shall be defrayed in like manner as expenses under the principal Act are required to be defrayed, save that in the case of a rural authority they shall, with the exception of the principal and interest of any money borrowed, or the rent of any land hired by the county council be charged as general expenses.

(3.) All sums received by a county council in respect of any land acquired under this Act otherwise than from any sale or exchange, in so far as they are not required for the payment of expenses incurred by them in respect of such land, shall be paid to the sanitary authority, and in the case of a rural sanitary authority shall be credited to the parish on account of which the land was acquired.

HOUSING OF THE WORKING CLASSES ACT, 1890.

(53 & 54 Vict. Cap. 70.)

An Act to consolidate and amend the Acts relating to Artizans and Labourers Dwellings and the Housing of the Working Classes.

[18th August, 1890.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Housing of the Working Classes Act, 1890 (*p*). Short title of Act.

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(*n*) See also s. 4 of the Local Government Act, 1894, *post*, as to the use of the rooms here referred to by the parochial electors or parish council of a rural parish to discuss any question relating to allotments.

(*o*) Expenses incurred in the preliminary inquiry referred to in s. 3 (3), (4), *supra*, will be defrayed as in this section directed. The costs of an inquiry under s. 9 (3) of the Local Government Act, 1894 (to be held before an order for compulsory acquisition of land is made), will be defrayed as directed by ss. 9 (19) and 72 (4) of that Act.

(*p*) The carrying into effect of this Act is not one of the duties imposed on a county council, except in the case of the London County Council, which is the local authority under Parts I. and III., and is generally concerned in the

PART II.

Unhealthy Dwelling-Houses.

* * * * *

Powers of County Councils.

Sect. 45 (1). Powers of county councils.

45.—(1.) Where the medical officer of health or any inhabitant householders make a representation or complaint (*q*), or give information to any vestry or district board in the administrative county of London or to the local board of Woolwich, or to any rural sanitary authority elsewhere (which vestry, board, or authority is in this Act referred to as the district authority) (*r*) or to the medical officer of such authority either respecting any dwelling-house being in a state so dangerous or injurious to health as to be unfit for human habitation, or respecting an obstructive building, and also where a closing order has been made as respects any dwelling-house, the district authority shall forthwith forward to the county council of the county in which the dwelling-house or building is situate, a copy of such representation, complaint, information, or closing order, and shall from time to time report to the council such particulars as the council require respecting any proceedings taken by the authority with reference to such representation, complaint, information, or dwelling-house.

(2.) Where the county council—

(a) are of opinion that proceedings for a closing order as respects any dwelling-house ought to be instituted, or that an order ought to be made for the demolition of any buildings forming or forming part of any dwelling-house as to which a closing order has been made, or that an order ought to be made for pulling down an obstructive building specified in any representation under this part of this Act; and

(b) after reasonable notice, not being less than one month, of such opinion has been given in writing to the district authority, consider that such authority have failed to institute or properly prosecute proceedings, or to make the order for demolition, or to take steps for pulling down an obstructive building;

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execution of this Act. The entire Act is set out in Lumley's Public Health. Two sections only (both included in Part II. of the Act) are set out here, namely, s. 45, which enables a county council to assume the powers of a local authority in the case of default by the latter, and s. 52, which enables the county medical officer to make a representation under Part II. of that Act.

(*q*) The representation or complaint here referred to is that made by the medical officer of health of a district, or four householders, that a dwelling-house is unfit for human habitation, or that a building is an obstructive building. See ss. 30, 31, 38 of this Act.

It seems that a representation or complaint made by a parish council under the Local Government Act, 1894, s. 6 (2), *post*, must be reported to the county council under this section.

(*r*) The district authority does not include an urban council, save in the case of the Woolwich Local Board. Consequently an urban council will not

the council may pass a resolution to that effect, and thereupon the powers of the district authority as respects the said dwelling-house and building under this part of this Act (otherwise than in respect of a scheme), shall be vested in the county council, and if a closing order or an order for demolition or for pulling down an obstructive building is made, and not disallowed on appeal, the expenses of the council incurred as respects the said dwelling-house and building, including any compensation paid, shall be a simple contract debt to the council from the district authority (*s*).

(3.) Any debt to the council under this section shall be defrayed by the district authority as part of their expenses in the execution of this part of this Act (*t*).

(4.) The county council and any of their officers shall, for the purposes of this section, have the same right of admission to any premises as any district authority or their officers have for the purpose of the execution of their duties under the enactments relating to public health, and a justice may make the like order for enforcing such admission (*u*).

* * * * *

Report to local authority by county medical officer. 45 & 46 Vict. c. 50.

52. A representation from the medical officer of health of any county submitted to the county council and forwarded by that council to the local authority of any district in the county, not being a borough as defined by the Municipal Corporations Act, 1882, shall, for the purposes of this part of this Act, have the like effect as a representation from the medical officer of health of the district (*x*).

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have to report to the county council under this sub-section, nor can the county council act under this section in an urban district.

(*s*) The district authority (see the preceeding sub-section) will have the month after notice within which they may themselves proceed to apply for a closing order, to make a demolition order, or as the case may be. After the month their powers will pass to the county council, who may put this part of the Act in operation as if they were the local authority.

(*t*) As to these expenses, see s. 42 of the Act.

(*u*) There is no general enactment in the Public Health Acts relating to the entry of officers upon premises for the performance of their duties. There are several express provisions enabling them to enter for specific purposes, and the provision which seems to be indicated in the text is that in s. 102 of the Public Health Act, 1875. That section enables an officer to enter any premises for the purpose of examining as to the existence of any nuisance therein at any time between the hours of nine a.m. and six p.m. If admission is refused, a justice, upon complaint made to him upon oath, may, by order, authorize the officer to enter. The text may, however, refer to s. 305 of the same Act.

(*x*) This section seems to be intended to provide that the medical officer of a county council appointed under the Local Government Act, 1888, s. 17, *ante*, p. 44, may make a representation to his council with reference to unhealthy dwellings or obstructive buildings in the county, and not in any borough. If he does so the council must forward the representation to the local authority, who must thereupon take proceedings upon it as if it were a representation made to them by their own medical officer.

TECHNICAL INSTRUCTION ACT, 1891.

(54 VICT. CAP. 4) (*y*).

An Act to amend the Law relating to Technical Instruction.

[26th March, 1891.]

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Explanation of powers of local authority as to technical instruction. 52 & 53 Vict. c. 76.

1.—(1.) Subject to the conditions and restrictions contained in the Technical Instruction Act, 1889, a local authority (*a*) may—

(a.) Make such provision in aid of the technical or manual instruction for the time being supplied in a school or institution outside its district as may, in the opinion of the authority, be necessary for the requirements of the district in cases where similar provision cannot be so advantageously made by aiding a school or institution within its district (*b*) ; and

(b.) Provide or assist in providing scholarships for or pay or assist in paying the fees of students ordinarily resident in the district of the local authority at schools or institutions within or outside that district.

(2.) In distributing the provision made in aid of technical or manual instruction, the local authority may consider all the circumstances of the case, and shall not be bound to distribute the provision so made exclusively in proportion to the nature and amount of efficient technical or manual instruction supplied by those schools or institutions respectively.

Application of balances. 53 & 54 Vict. c. 60.

2. Any moneys received by a county council under sub-section (1) (b) of section one of the Local Taxation (Customs and Excise) Act, 1890 (*c*), and directed by resolution of the county council to be appropriated or to be set aside for the purposes of technical or manual instruction, shall, although not expended or specifically contributed or allotted in whole or in part before the end of the financial year, remain applicable for such purposes, and shall not be applied in manner provided by sub-section (2) and the following sub-sections of section twenty-three of the Local Government Act, 1888 (*d*), until the county council shall have made an order for such application.

51 & 52 Vict c. 41.

Where a council shall have referred to a committee the question of appropriating to purposes of technical or manual instruction any sum consisting of the whole or any part of such moneys, this section, unless and until the council otherwise direct, shall, until the committee shall have made their report and the council shall have

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(*y*) This Act amends and explains the Technical Instruction Act, 1889, *ante*, p. 435.

(*a*) The expression "local authority" includes a county council. See the Act of 1889, s. 4, *ante*, p. 438.

(*b*) Under the Act of 1889, and could only be given to schools and institutions within the district.

(*c*) See this section, *ante*, p. 515.

(*d*) See this section, *ante*, p. 50.

arrived at a decision thereon or the appointment of the committee shall have been rescinded, apply to such sum as if the same had been directed by the council to be appropriated to such purposes. Sect. 2.

3. The expression "technical education" in section one of the Local Taxation (Customs and Excise) Act, 1890 (*c*), shall be deemed to include both technical and manual instruction within the meaning of the Technical Instruction Act, 1889 and 1891. Construction of 53 & 54 Vict. c. 60, s. 1.

4. This Act may be cited as the Technical Instruction Act, 1891, and shall be construed as one with the Technical Instruction Act, 1889, and this Act and the Technical Instruction Act, 1889, may be cited together as the Technical Instruction Acts, 1889 and 1891. Short title and construction.

ELECTORAL DISABILITIES REMOVAL ACT, 1891.

(54 Vict. Cap. 11) (*e*).

An Act to remove certain Disabilities of Persons by reason of absence to be registered as Voters at Parliamentary and Local Elections.

[11th May, 1891.]

* * * * *

1. This Act may be cited as the Electoral Disabilities Removal Act, 1891. Short title.

2. A person shall not be disqualified from being registered— Temporary absence of person in performance of duty not to disqualify as elector.

(a) in the parliamentary register of electors for a county or borough in respect of his inhabitant occupation of a dwelling-house or lodgings or his occupation of any land or tenement; or

(b) in the local government register of electors (*f*) for a county or borough in respect of his occupation of any house, warehouse, counting-house, shop, building, land, or tenement,

by reason only that during part of the qualifying period not exceeding four months at any one time, he has in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him been absent from his dwelling-house or lodgings, or not resided in or within the required distance from such county or borough.

(*e*) This Act creates an important exception to the general rule that, for purposes of the old burgess qualification and of the new ten pounds occupation qualification, both of which are extended to county electors, residence during the whole of the qualifying period is necessary. Cases illustrative of this principle will be found in the notes to the Municipal Corporations Act, 1882, s. 9, *ante*, p. 244.

(*f*) This expression means, as respects an administrative county, the county register, and as respects a county or other municipal borough, the burgess roll. See the Interpretation Act, 1889, s. 17.

RAILWAY AND CANAL TRAFFIC (PROVISIONAL ORDERS) AMENDMENT ACT, 1891.

(54 Vict. Cap. 12) (*g*).

An Act to remove doubts as to the Powers of Public Bodies in reference to Provisional Order Bills under the Railway and Canal Traffic Act, 1888. [11th May, 1891.]

Whereas by an Act of the thirty-fifth and thirty-sixth years of the reign of Her present Majesty, chapter ninety-one, intituled "An Act to authorise the application of funds of municipal corporations and other governing bodies in certain cases," herein-after referred to as the Borough Funds Act, authority is given to the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, to apply the borough fund or rate, or other the public funds or rates under the control of any such governing body, to the payment of the costs, charges, and expenses of promoting or opposing any local and personal Bill or Bills in Parliament:

35 & 36 Vict. c. 91.

And whereas by the Local Government Act, 1888, and the Local Government (Scotland) Act, 1889, the county council of an administrative county has the same powers of opposing Bills in Parliament as are conferred on the council of a municipal borough by the above-recited Act of the thirty-fifth and thirty-sixth years of Victoria, chapter ninety-one:

51 & 52 Vict. c. 41.
52 & 53 Vict. c. 50.

And whereas by the Borough Funds (Ireland) Act, 1888, similar powers were conferred upon governing bodies in Ireland:

51 & 52 Vict. c. 53.

And whereas by the Railway and Canal Traffic Act, 1888, it was, among other things, provided that if while any Bill to confirm a Provisional Order by the Board of Trade under section twenty-four of that Act be pending in either House of Parliament a petition be presented against the Bill, or any classification and schedule comprised therein, the Bill, so far as it relates to the matter petitioned against, should be referred to a select committee, or, if the two Houses of Parliament think fit so to order, to a joint committee of such Houses, and the petitioner should be allowed to appear and

51 & 52 Vict. c. 25.

(*g*) The object of this Act is fully stated in the preamble. Under the Local Government Act, 1888, s. 15, power was given to a county council to oppose bills in Parliament to the same extent as a borough council might do so under the Borough Funds Act. But the power to oppose under the last-mentioned Act was confined to local and personal bills, while a provisional order under 51 & 52 Vict. c. 25, s. 24, is a public general Act.

The 51 & 52 Vict. c. 25, s. 24, enables the Board of Trade to submit to Parliament a provisional order confirming a revised classification of merchandise traffic, and a revised schedule of maximum rates and charges applicable thereto. The Act under consideration enables a county council to petition and appear against the bill confirming such order, as if it were a local and personal bill.

oppose as in the case of a private Bill; and further, it was by the said Act provided that the Act of Parliament confirming any Provisional Order made under that section should be a public general Act: Preamble.

And whereas doubts have been entertained whether in view of the said enactment governing bodies as defined by the Borough Funds Act and the Borough Funds (Ireland) Act, 1888, respectively and county councils have power to apply the funds or rates under their control in opposing or subscribing towards the opposition of any Bill to confirm any Provisional Order made under section twenty-four of the Railway and Canal Traffic Act, 1888, and it is expedient that such doubts should be removed:

* * * * *

1. Every governing body within the meaning of the Borough Funds Act or the Borough Funds (Ireland) Act, 1888, and every county council shall be entitled to be a petitioner and to appear and oppose any Bill to confirm any Provisional Order made under section twenty-four of the Railway and Canal Traffic Act, 1888, and to provide or contribute towards providing the expenses of the appearance or opposition of a petitioner out of the funds or rates under their respective control, as if the Bill for confirming such Provisional Order were a local or personal Bill within the meaning of section two of the Borough Funds Act, or of section three of the Borough Funds (Ireland) Act, 1888; and the provisions of the said last-mentioned Acts respectively shall apply to any such appearance or opposition, and to any expenses incurred or to be incurred in relation thereto: Provided that in the case of a county council no consent of owners and ratepayers shall be required. Powers of governing bodies and county councils with reference to Bills for confirming Provisional Orders made under 51 & 52 Vict. c. 25, s. 24.

2. This Act may be cited as the Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891. Short title.

REGISTRATION OF ELECTORS ACT, 1891.

(54 Vict. Cap. 18.)

An Act for the removal of Doubts arising under the Registration of Electors Acts. [11th June, 1891.]

Whereas under section thirty of the Parliamentary and Municipal Registration Act, 1878, one half of the expenses and receipts under the Registration of Electors Acts in respect of an area common to a parliamentary borough and a municipal borough are defrayed and applied in accordance with the Parliamentary Registration Acts, and one half are paid out of and to the borough fund: 41 & 42 Vict. c. 26.

And whereas by section four of the County Electors Act, 1888, the said Act, together with other Registration of Electors Acts, is applied to a parish not situate in a municipal borough, with the substitution of "parish" for "municipal borough": 51 & 52 Vict. c. 10.

Preamble. And whereas doubts have arisen whether, having regard to the provisions of section eight of the said Act, the provisions of section thirty of the Parliamentary and Municipal Registration Act, 1878, were applied by virtue of the above-recited enactment, and it is expedient to remove such doubts:

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Short title and construction.

1. This Act may be cited as the Registration of Electors Act, 1891, and shall be construed as one with the Registration of Electors Acts, 1843 to 1888, which Acts, together with this Act, may be cited as the Registration of Electors Acts, 1843 to 1891.

Application of 41 & 42 Vict. c. 26, s. 30, to expenses in a parish situate in a parliamentary and not in a municipal borough.

2. Where a parish is situate in a parliamentary but not in a municipal borough, one half of the expenses and receipts under the Registration Acts, 1843 to 1888, in respect of such parish shall, as from the passing of the County Electors Act, 1888, be defrayed out of and paid to the county fund, and the other half of such expenses shall be defrayed out of and paid to the rate raised in such parish for the relief of the poor (*h*). The revising barrister shall as part of the business of the revision, if necessary, determine what expenses and receipts are incurred or arise or have been incurred or have arisen under the said Acts in respect of such parish.

FISHERIES ACT, 1891.

(54 & 55 VICT. CAP. 37) (*i*).

An Act to carry into effect an International Declaration respecting the North Sea Fisheries, and to amend the Law relating to Sea Fisheries and Salmon and Freshwater Fisheries.

[21st July, 1891.]

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PART I. (*k*).

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PART II.

SEA FISHERIES REGULATION ACT, 1888.

Extension of powers of local fisheries

7. The powers of a local fisheries committee to make bye-laws in pursuance of section two of the Sea Fisheries Regulation Act, 1888 (*l*),

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(*h*) See s. 8 of the County Electors Act, 1888, *ante*, p. 396.

(*i*) Part II. of this Act is to be read as one with the Sea Fisheries Regulation Act, 1888 (51 & 52 Vict. c. 54), *ante*, p. 401, and with the Sea Fisheries Regulation Act, 1894 (57 & 58 Vict. c. 26), *post*.

(*k*) Part I. relates only to the Belgian Declaration respecting the North Sea Fisheries.

(*l*) See this section, *ante*, p. 402. The local fisheries committee is a committee of a county or borough council, or a joint committee of two or more councils in a sea fisheries district created under the Act of 1888.

shall extend to making bye-laws, to be observed within their district, for restricting or prohibiting, either entirely or subject to any exceptions and regulations, the fishing for or taking of all or any specified kinds of sea fish during any period specified in any such bye-law. Sect. 7. committee for making bye-laws. 51 & 52 Vict. c. 54.

8. Where any offence under the Sea Fisheries Regulation Act, 1888, or under any bye-law made in pursuance thereof, is committed on the sea coast or at sea beyond the ordinary jurisdiction of a court of summary jurisdiction and not on or from a ship or boat, it shall be deemed to have been committed within the body of any county abutting on that sea coast, or adjoining that sea, and may be tried and punished accordingly. Jurisdiction as to offences.

9. A local fisheries committee appointed in pursuance of the Sea Fisheries Regulation Act, 1888, may, within their district, enforce the provisions of the Fisheries (Oyster, Crab, and Lobster) Act, 1877, and of any other Act relating to sea fisheries. Powers of local fisheries committee for enforcement of Sea Fisheries Acts.

10. Any county or borough council may, if they think fit, pay or contribute to any expenses incurred by a board of salmon conservators in exercise of their powers under the Sea Fisheries Regulation Act, 1888 (*m*). Power for county council, etc., to pay or contribute to expenses under 51 & 52 Vict. c. 54.

11. This Part of this Act shall be construed as one with the Sea Fisheries Regulation Act, 1888, and that Act and this Part of this Act may be cited collectively as the Sea Fisheries Regulation Acts, 1888 and 1891. Construction and short title of Part of Act.

PART III. (*n*).

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PART IV.

General.

13. The powers conferred by the Sea Fisheries Act, 1883, or this Act, or any other Act relating to sea fisheries, or by any Act relating to salmon and freshwater fisheries, upon any authorities or officers to enforce any such Act shall not be construed as limiting or taking away the power of any other person to take legal proceedings for the enforcement of any such Act or of any bye-law made thereunder. Explanation as to power of taking legal proceedings for enforcing Fisheries Acts.

14. This Act may be cited as the Fisheries Act, 1891. Short title.

(*m*) See s. 12 of the Act of 1888, *ante*, p. 406.

(*n*) Part III. enables the Board of Trade to constitute a fishery district for the River Stour (Suffolk and Essex).

SCHOOLS FOR SCIENCE AND ART ACT, 1891.

(54 & 55 Vict. Cap. 61.) (*o*).

An Act to facilitate the transfer of Schools for Science and Art to Local Authorities. [5th August, 1891.]

* * * * *

Transfer of school for science and art or literary or scientific institution to local authority.
17 & 18 Vict. c. 112.
52 & 53 Vict. c. 76.
33 & 34 Vict. c. 75.

1.—(1.) The managers of any school for science and art, or for science, or for art, or of any institution to which the Literary and Scientific Institutions Act, 1854, applies (*p*), may make an arrangement with any local authority within the meaning of the Technical Instruction Act, 1889 (*q*), for transferring the school or institution to that authority, and the local authority may assent to any such arrangement and give effect thereto, subject to the provisions of that Act.

(2.) The provisions of section twenty-three of the Elementary Education Act, 1870 (*r*), with respect to arrangements for the transfer of schools shall apply in the case of arrangements for the transfer of schools or institutions in pursuance of this section, with this modification, that for the purposes of transfers to a local authority references to the school board shall be construed as references to the local authority and references to the Education Department as references to the Department of Science and Art, and references to a school shall, in the case of an institution not being a school, be construed as references to the institution.

(3.) In this section the expression "managers" includes all persons who have the management of any school or institution,

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(*o*) This Act permits the managers of schools for science and art, and other similar institutions, to transfer those schools or institutions to local authorities, including county councils. The powers of the body to whom such a transfer is made as to the management of the school or institution, are left somewhat vague by this Act; they are, however, to give effect to the arrangement for the transfer, subject to the provisions of the Technical Instruction Act, 1889 (*ante*, p. 435); and s. 23 of the Elementary Education Act, 1870, as to transfers of schools to school boards, is to apply with certain modifications. It seems, therefore, that the powers of management are to be gathered from those enactments.

(*p*) The institutions here referred to are "every institution for the time being established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries, reading-rooms for general use among the members or open to the public, of public museums and galleries, of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs," except the Royal Institution and the London Institution for the Advancement of Literature and the Diffusion of Useful Knowledge.

(*q*) This definition includes a county council, see s. 4 of the Act, *ante*, p. 438.

(*r*) The section referred to contains detailed provisions as to voluntary arrangements for the transfer of an elementary school, and the property held in connection with it, to a school board. A school so transferred "shall to such extent and during such times as the school board have, under such arrangement, any control over the school, be deemed to be a school provided by the school board."

whether the legal interest in the site and buildings of the school or institution is or is not vested in them (*s*). Sect. 1 (3)

2. This Act may be cited as the Schools for Science and Art Act, 1891. Short title.

HIGHWAYS AND BRIDGES ACT, 1891.

(54 & 55 Vict. Cap. 63.)

An Act to confer further powers on County Councils and other Authorities with respect to Main Roads and other Highways and Bridges. [5th August, 1891.]

* * * * *

1. This Act may be cited as the Highways and Bridges Act, 1891. Short title

2. This Act shall not apply to Scotland or Ireland or the county of London. Extent of Act.

3. The council of any administrative county, and any highway authority or authorities (*t*), and the council of any adjoining county, may from time to time make and carry into effect agreements (*u*) with each other for or in relation to the construction, reconstruction, alteration or improvement, or the freeing from tolls, of any main road (*v*) or other highway, or of any bridge (including the approaches thereto), wholly or partly situate within the jurisdiction of any one or more of the party or parties to the agreement. Agreement between highway authorities for improvement of roads and bridges.

All expenses incurred by any such county council or highway

(*s*) It is doubtful whether this sub-section enables the managers to convey a legal interest in property which is not vested in them to the local authority. Section 23 of the Elementary Education Act, 1870, provides that "nothing in this section shall authorize the managers to transfer any property which is not vested in them, or a trustee for them, or held in trust for the school."

(*t*) By s. 6, *post*, expressions which are defined by the Local Government Act, 1888, are to have the same meaning in this Act. By s. 100 of that Act, *ante*, p. 174, the expression "highway authority" means as respects an urban sanitary district, the urban sanitary authority, and as respects a highway district, the highway board or authority having the powers of a highway board; and as respects a highway parish, the surveyor or surveyors of highways or other officers performing similar duties. Since the passing of the Local Government Act, 1894, which by s. 25, *post*, p. 621, transfers to rural councils the powers of the highway authorities within their districts, the foregoing definition is out of date, and the highway authorities are practically the urban and rural district councils.

(*u*) The Inland Revenue authorities do not consider that these agreements, or agreements under s. 11 (3) (4) of the Local Government Act, 1888, are made "pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways," so as to be chargeable with a sixpenny stamp only under the Stamp Act, 1891. That Act contains no definition of "the Highway Acts"; and neither the Act of 1888 nor this present Act is included in the group of Highway Acts referred to in the Short Titles Act, 1896 (59 & 60 Vict. c. 14), the collective title given being "The Highway Acts, 1835 to 1885."

(*v*) As to main roads, see s. 11 of the Local Government Act, 1888, and the notes to that section, *ante*, p. 21.

Sect. 3.

authority, in pursuance of this section, shall be defrayed as part of the expenses incurred in relation to the maintenance, repair, improvement, or enlargement of bridges, main roads, or other highways by such council or highway authority (*x*), in such proportions as shall be determined by any such agreement as aforesaid, and any powers of borrowing, applicable to the raising of any fund for the payment of any such expenses as aforesaid, shall be applicable accordingly:

Provided that if a highway board (*y*) think it just that any parish or parishes specially benefited by any construction, reconstruction, alteration, or improvement under this section should bear the expense thereof, or any part of such expense, they may, with the approval of the county council of the county within which their highway district is situate, and with the assent of the inhabitants of such parish or parishes in vestry assembled (*z*), charge such expense, or such part thereof as they may think just, exclusively on such parish or parishes.

Power to reduce main road to status of ordinary highway. 41 & 42 Vict. c. 77.

4. Section sixteen of the Highways and Locomotives Amendment Act, 1878, shall apply to any part of a main road in any county, and so much of such section as requires that any order made thereunder shall be provisional, and shall be confirmed as in the said Act mentioned, is hereby repealed, but no such order shall be made in respect of any main road within a municipal borough without the assent of the council of the said borough having been first obtained (*a*).

Contracts for supply of road material not to disqualify for election to county council.

5. No person shall be disqualified for being elected, or for being a member of a county council, by reason only of his having any share or interest in any contract with such county council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges. Provided always that no such share or interest in any contract shall exceed the amount of fifty pounds in any one year (*b*).

Construction of Act. 51 & 52 Vict. c. 41.

6. Words and expressions to which meanings are assigned by the Local Government Act, 1888, have in this Act the same respective

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(*x*) In the case of a county council, these expenses will therefore be general expenses. See the Local Government Act, 1888, s. 11, sub-s. (1), *ante*, p. 21.

(*y*) The rural district council has, with few exceptions, now succeeded to all the powers and duties of a highway board within its district. See the Local Government Act, 1894, s. 25, *post*, p. 621.

(*z*) In a rural parish the parish council, or parish meeting (as the case may be), must now give this assent.

(*a*) Section 16 of the Highways and Locomotives Amendment Act, 1878, is set out, *ante*, p. 22.

(*b*) But for this provision a county councillor who had an interest in such a contract would have been disqualified under s. 12, sub-s. (1) (c), of the Municipal Corporations Act, 1882, *ante*, p. 252.

meanings, and in this Act the word "highway" includes any public bridle path or footway (*c*). Sect. 6.

LUNACY ACT, 1891.

(54 & 55 VICT. CAP. 65.)

An Act to amend the Lunacy Act, 1890 (*d*). [5th August, 1891.]

* * * * *

1. This Act may be cited as the Lunacy Act, 1891, and this Act shall be construed as one with the Lunacy Act, 1890 (in this Act called the principal Act), and this Act and the principal Act may be cited together as the Lunacy Acts, 1890 and 1891. Short title. 53 & 54 Vict. c. 5.

* * * * *

6. Where a workhouse is situate in a county which does not include the union to which the workhouse belongs, a summary reception order made by a justice of the county in which the workhouse is situate may order a lunatic in the workhouse to be received in any asylum, in which pauper lunatics chargeable to the union, to which the workhouse belongs, may legally be received. Section 27.

7. Sub-section four of section thirty-eight of the principal Act is hereby repealed, and the following sub-section is substituted therefor :— Section 38 (4).

(4.) A reception order shall remain in force for a year after the date by this Act or by an order of the Commissioners appointed for it to expire, and thereafter for two years, and thereafter for three years, and after the end of such periods of one, two, and three years for successive periods of five years, if not more than one month nor less than seven days before the expiration of the period at the end of which, as fixed by this Act or by an order of the Commissioners under sub-section two, the order would expire, and of each subsequent period of one, two, three, and five years respectively, a special report of the medical officer of the institution or of the medical attendant of the single patient as to the mental and bodily condition of the patient with a certificate under his hand certifying that the patient is still of unsound mind and a proper person to be detained under care and treatment is sent to the Commissioners.

8. Section thirty-nine of the principal Act shall not apply to lunatics received under a removal order or to lunatics so found by inquisition. Section 39.

9. * * * * *

(2.) In sub-section six of section fifty-five of the principal Act, Section 55.

(*c*) See s. 100 of the Local Government Act, 1888, *ante*, p. 171.

(*d*) The present Act is set out only so far as it alters or amends the provisions of the Act of 1890 (which are set out, *ante*, p. 440), or otherwise affects county councils.

Sect. 9 (2). for the words "licensed by visitors" shall be substituted the words "licensed by justices," and for the words "the Commissioners or visitors" shall be substituted the words "such Commissioner or such two visitors."

* * * * *

Section 61 (1). **11.** In sub-section one of section sixty-one of the principal Act the words "to the workhouse of the union to which the lunatic is chargeable, or if the lunatic is chargeable to a county or borough (*e*), to the workhouse of the union from which he was sent to the hospital or licensed house" shall be inserted after the words "of the lunatic."

Hospitals may alter regulations. **12.** The managing committee of every hospital may, with the approval of a secretary of state, alter the regulations of the hospital.

Boroughs annexed to counties under s. 246 to contribute to expense of asylum. **13.**—(1.) Where under section two hundred and forty-six of the principal Act, a borough ceases to be a local authority under that Act, the borough shall for all purposes of that Act be annexed to and treated as part of the county in which the borough is situate, and if or so far as the borough has not contributed towards the expense of providing the asylum of the county, a sum to be paid by the borough towards the expenses already incurred in providing the asylum shall be fixed by agreement between the councils of the county and borough, or in default of agreement by an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by an arbitrator appointed by the Local Government Board. In fixing the sum to be paid by the borough, the borough shall be credited with any sums already contributed by the borough for lunacy purposes in excess of its legal liability; and the arbitrator shall take into consideration the amounts that may have been paid by the borough for the reception or maintenance, in the asylum of the county, of the lunatics of the borough.

(2.) Where a borough had before the passing of this Act, by virtue of section eighty-six of the Local Government Act, 1888, and the determination of any contract, become liable to contribute to the county rate of the county in respect of a lunatic asylum, this section shall apply to such borough as if it had immediately after the passing of this Act ceased under section two hundred and forty-six of the principal Act, to be a local authority (*f*).

51 & 52 Vict. c. 41

(*e*) As to the cases in which a lunatic may be chargeable to a county or borough, see s. 290 of the Lunacy Act, 1890, *ante*, p. 468.

(*f*) Section 86 (4) of the Local Government Act, 1888 (repealed by the Lunacy Act, 1890, and substantially re-enacted by s. 246 of that Act, *ante*, p. 454, which is itself partially repealed by s. 26 of this Act, *post*), provided that where at the passing of the Act a borough with separate quarter sessions, and not a county borough, but containing in 1881 a population of 10,000 or upwards,

Sect. 14.

Power to refer questions as to asylums to the court or to arbitration.

14. Any question relating to lunatic asylums or the maintenance of lunatics arising between any local authorities under the principal Act and any boroughs not being local authorities under that Act, and any visiting committees or any two or more of such parties respectively, may be referred to an arbitrator appointed by the parties, or, if the parties cannot agree upon an arbitrator, by the Local Government Board.

Section 62 of 51 & 52 Vict. c. 41 applied.

15. The provisions of sub-sections five, six, and seven of section sixty-two of the Local Government Act, 1888, shall apply to every sum by virtue of this Act agreed to be paid or awarded by an arbitrator as if such sum had been agreed to be paid or awarded under section sixty-two of the Local Government Act, 1888 (*g*).

Amendment of s. 254 of 53 & 54 Vict. c. 5.

16. In sub-section two of section two hundred and fifty-four of the principal Act, there shall be added after the word "contracts" the words "for the purchase of lands and buildings and for the erection, restoration, and enlargement of buildings" (*h*).

Contracts by town councils and the subscribers to a hospital.

17. Where a contract between the council of a borough and the subscribers to a hospital for the reception of pauper lunatics into the hospital was subsisting on the twenty-sixth day of August one thousand eight hundred and eight-nine, such contract, unless determined by the parties or one of them, shall be deemed to have continued in force since that date, and may be renewed subject to the same conditions and with the same consequences as if the contract had been entered into by a visiting committee on behalf of the borough (*i*).

Accounts of county asylums.

18. The provisions of the Local Government Act, 1888, relating to the accounts of county councils and their officers, and to the

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contracts with the county quarter sessions for the reception of the borough lunatics in the county asylum, such borough, on the determination of the contract, should cease to have power to build an asylum, and should, "subject to the enactments providing for an additional charge for the maintenance of lunatics in cases where no contribution has been made towards the cost of building and furnishing an asylum," be liable to contribute to the county rate in respect of such asylum in like manner as the rest of the county. The provision in the text seems to have been passed in consequence of the decision in *Howlett* v. *Maidstone* (*Mayor, etc., of*), [1891] 2 Q. B. 110; 60 L. J. Q. B. 570; 65 L. T. (N.S.) 448; 40 W. R. 116; 55 J. P. 549, in which it was held that by reason of the above sub-section the visitors of a county asylum had no power (which they formerly had under s. 54 of 16 & 17 Vict. c. 97) of fixing the amount to be paid for the maintenance of a pauper lunatic sent from a borough which had not contributed to the cost of building and furnishing the asylum, but that in case of difference the borough was entitled to have the amount ascertained by arbitration, under s. 62 of the Local Government Act, 1888. Any such arbitration will now be under ss. 14 and 15 of this Act.

(*g*) See s. 62 of the Act of 1888, *ante*, p. 119.

(*h*) See s. 254 of the Act of 1890, *ante*, p. 455.

(*i*) See s. 269 (2) of the Act of 1890, *ante*, p. 461.

Sect. 18.

audit of such accounts, shall apply to the accounts of every asylum belonging wholly or in part to a county council and of the visiting committee and officers thereof (*k*).

Removal of lunatic becoming a pauper.

19.—(1.) Where a lunatic in a hospital or licensed house becomes a pauper, the manager of the hospital or house may, after having given notice to the authority liable for the maintenance of the lunatic (*l*) of his intention so to do, apply to a justice of the peace having jurisdiction in the place where the hospital or house is situate for an order for the removal of the lunatic, and such justice may, if he thinks fit, make an order for the removal of the lunatic to an institution for lunatics to which pauper lunatics for whose maintenance the authority is liable may legally be sent and for the reception of the lunatic therein, and such institution shall be named in the order, and the manager of the hospital or house shall forthwith cause the lunatic to be removed to the institution named in the order. In the case of such removal the original reception order shall remain in force, and shall authorise the classification of the lunatic as a pauper lunatic in the institution to which he is removed.

(2.) The costs of obtaining an order under this section and of the removal of the lunatic shall be repaid to the manager who obtains the order by the authority liable for the maintenance of the lunatic, and any justice having jurisdiction in the place where the hospital or house from which the lunatic was removed is situate shall have power to fix the amount of such costs and to order such authority to repay the same. The provisions of section three hundred and fourteen of the principal Act (*m*) shall apply to every such order for the repayment of costs.

* * * * *

Payment of expenses as to lunatics becoming paupers

22. The provisions of the principal Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to lunatics in institutions for lunatics who become paupers (*n*).

* * * * *

Repeal.

29. The enactments in the schedule are hereby repealed.

(*k*) This section is in substitution for s. 279 of the Lunacy Act, 1890, which is repealed by s. 26, *post*. As to the accounts of county councils and the audit of those accounts, see the Local Government Act, 1888, s. 71, *ante*, p. 136, and the enactments there referred to.

(*l*) As to the authority liable for the maintenance, see ss. 286 *et seq.*, of the Lunacy Act, 1890, *ante*, p. 467; such authority may be the county or borough council: see s. 290 of the same Act, *ante*, p. 468.

(*m*) See this section, *ante*, p. 475.

(*n*) See Part X. of the Act of 1890, *ante*, p. 466, *et seq.*

SCHEDULE.

Schedule.

ENACTMENTS REPEALED.

Section 29.

Session and Chapter.	Short Title.	Extent of Repeal.
53 & 54 Vict. c. 5.	The Lunacy Act, 1890	Section nine, sub-section one, from "having" to the end of the sub-section. Section ten, in sub-section one the words "within the county and borough respectively," and in sub-section four the words "within the same" occurring twice. Section thirteen, sub-section two, from "within" to "jurisdiction." Section twenty-four, sub-section six, from "that a pauper" to "asylum" where that word next occurs. Section sixty-two. Section ninety-nine, the words "with a jury." Section one hundred and forty-nine. Section two hundred and forty-six, from "subject" to "an asylum." Section two hundred and seventy-nine. Section three hundred and thirty-eight, sub-section two, the words "in lunacy." The Second Schedule, Form 13. The Fourth Schedule, the references to "Dover" and "Maidstone" repealed as from the commencement of the Lunacy Act, 1890.

COUNTY COUNCILS (ELECTIONS) ACT, 1891.

(54 & 55 VICT. CAP. 68.)

An Act to alter the Date of holding County Council Elections, and to remove Doubts respecting the Holding of such Elections.

[5th August, 1891.]

* * * * *

Change of date of elections.

1.—(1.) The ordinary day of election of county councillors in each county shall be such day between the first and eighth day of March as the county council may fix, and, if no date is so fixed, shall be the eighth day of March (*o*).

(2.) The ordinary day of retirement of county councillors shall be the eighth day of March in every third year, and on that day the county councillors then in office shall retire together, and their places shall be filled by the newly-elected councillors, who shall come into office on that day.

(3.) The sixteenth day of March or such other day within ten days after the ordinary day of retirement of county councillors as the council of any county may from time to time fix for that county, shall, in substitution for the ninth day of November, be the ordinary day of election of the chairman, and of the aldermen, and the day for holding a quarterly meeting, and if the county council fix any hour for the quarterly meeting, that hour shall be

(*o*) Under the Local Government Act, 1888, s. 75, the ordinary day of election was November 1st.

Sect. 1 (3). substituted for the hour specified in the Municipal Corporations Act, 1882 (*p*).

45 & 46 Vict. c. 50.

(4.) All periods which, in the enactments of the Municipal Corporations Act, 1882, are computed by reference to the first or ninth day of November shall, so far as those enactments apply to county councils, be computed by reference to such of the above-mentioned days then next following as the case requires (*q*).

The ordinary day of election of councillors shall be fixed by the county council not less than six weeks before the ordinary day of retirement of county councillors.

Nothing shall authorise or require a returning officer to hold an election of a county councillor to fill a casual vacancy which occurs within six months before the ordinary day of retirement of county councillors (*r*).

County registers.

2.—(1.) The county register shall be completed before the twentieth day of December in every year and come into operation on the next first day of January.

(2.) The burgess lists forming the burgess roll, which comes into operation on the first day of November in every year, shall on and after that day until the next first day of January form part of the county register in substitution for the former burgess lists (*s*).

Removal of doubts and amendment as to election of county councillors in boroughs.

3. For the purpose of the election of county councillors for any electoral division which is co-extensive with, or wholly comprised in, a municipal borough, the following provisions shall have effect:—

(a.). The mayor of the borough, or some person appointed by him, or, if the mayor is dead or absent or otherwise incapable of acting, an alderman appointed by the council of the borough, shall be the returning officer, and so far as respects such election shall follow the instructions of, and return the names of the persons elected to, the county returning officer:

51 & 52 Vict. c. 41.

(b.) Nothing in section seventy-five of the Local Government Act, 1888, substituting the returning officer or his deputy for the town clerk, shall extend to any such election (*t*).

(*p*) Under the Local Government Act, 1888, s. 75, sub-s. (13), November 7th was the ordinary day of election of the chairman and county aldermen, and the day for holding a quarterly meeting of the county council. The hour for holding the November quarterly meeting was *noon*. See the Municipal Corporations Act, Sched. 2, r. 2, *ante*, p. 335.

(*q*) The periods here referred to are chiefly those which relate to elections. Thus, under s. 54 of the Municipal Corporations Act, 1882, notice of election must be given nine days at least before the day of election; nomination papers must be delivered seven days at least before that day, etc.

(*r*) This provision is substituted for that in the Local Government Act, 1888, s. 75, sub-s. (16) (a), which is repealed by this Act.

(*s*) This section amends s. 45 of the Municipal Corporations Act, 1882, as applied to county councils. See the notes to that section, *ante*, p. 280.

(*t*) This section is substituted for s. 75, sub-s. (6) of the Local Government Act, 1888.

Sect. 4.

Transitory provisions.

4. The chairmen and vice-chairmen of county councils, and the deputy chairman of the London County Council, county aldermen, and county councillors, and committees (including the members of a joint committee appointed by a county council) whose term of office would but for this Act expire on the ordinary day of election in November next after the passing of this Act, shall go out of office on the next following ordinary day of election or retirement (as the case may be) fixed by this Act, and their term of office shall be extended accordingly; but nothing shall authorise or require the returning officer to hold an election of a county councillor to fill a casual vacancy at any time before the ordinary day of election next after the passing of this Act, and the aldermen whose term of office would, but for this Act, expire at the end of three years after the November next after the passing of this Act shall go out of office on the ordinary day of election next following the end of those years, and their term of office shall be extended accordingly (*u*).

Amendment of 45 & 46 Vict. c. 50. ss. 34, 35; and 51 & 52 Vict. c. 41, s. 75.

5. The declaration required under sections thirty-four and thirty-five of the Municipal Corporations Act, 1882, to be made by a person elected to a corporate office in a county may be made at any time within three months after notice of the election, and such declaration may be made either in the manner prescribed by the Local Government Act, 1888, or before any justice of the peace or commissioner to administer oaths in the Supreme Court of Judicature (*x*).

Returning officer not disqualified for membership of county council.

6. It is hereby declared that a person shall not be disqualified, nor be deemed ever to have been disqualified, under section twelve of the Municipal Corporations Act, 1882, for being a member of a county council by reason only of his being appointed returning officer by that council, except where he has directly or indirectly by himself or his partner received any profit or remuneration in respect of such appointment (*y*).

Repeal.

7. The Act specified in the Schedule to this Act is hereby repealed to the extent in the third column of that schedule mentioned.

Short title and construction.

8. This Act may be cited as the County Councils (Elections) Act, 1891, and shall be construed as one with the Local Government Act, 1888.

(*u*) This section is now spent.

(*x*) See s. 34 of the Municipal Corporations Act, 1882, *ante*, p. 272. Under that section, as amended by the Local Government Act, 1888, s. 75, the period within which the declaration had to be made was ten days.

(*y*) See the notes to s. 12 of the Municipal Corporations Act, 1882, *ante*, p. 253.

Schedule.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
51 & 52 Vict. c. 41. -	The Local Government Act, 1888.	Section seventy-five, from "In a year in which" to "be conducted together," being sub-section one; from "In a borough the returning officer" down to "construed to refer to the town clerk," being sub-section six; and from "The period between" down to "returning officer may fix," being sub-section nine; and from "The seventh of November" to "quarterly meeting of the county council," being sub-section thirteen; and from "shall authorise or require" to "such electoral division or," being paragraph (d) of sub-section sixteen.

MORTMAIN AND CHARITABLE USES ACT AMENDMENT ACT, 1892.

(55 & 56 VICT. CAP. 11.)

An Act to amend the Mortmain and Charitable Uses Act, 1888.

[20th June, 1892.]

* * * * *

Extension of 51 & 52 Vict. c. 42, s. 6.

1. Section six of the Mortmain and Charitable Uses Act, 1888, except so much of sub-section (2) thereof as provides that an assurance by deed, made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assuror, shall apply to any assurance by deed of land to any local authority for any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land (*z*).

(*z*) Section 6 of the Mortmain and Charitable Uses Act, 1888, exempts from the provisions of Parts I. and II. of that Act assurances by deed of land of any quantity for certain public purposes, but requires that such an assurance, if made otherwise than in good faith, for full and valuable consideration, shall be executed not less than twelve months before the death of the assuror. It also exempts assurances by will of land of certain limited quantities. The effect of the provision of the text is to extend the exemption to assurances by deed to a county council or any other local authority (as defined in s. 2), for any purpose for which they are empowered by Act of Parliament to acquire land, although such assurances be voluntary, and be made within twelve months before the death of the assuror; it does not apply to assurances by will. "Land," in the Mortmain, etc., Act, 1888, includes "tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured in land, or other personal estate arising from or connected with land"; Mortmain, etc., Act, 1891 (54 & 55 Vict. c. 73), s. 3, repealing the definition in s. 10 of the Act of 1888. But as by s. 10 of the Act of 1891 nothing in that Act is to limit or affect the exemptions contained in Part III. of the Act of 1888 (which part includes s. 6), it would seem that "land" in the present Act will have the meaning assigned to it by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3, and will include "messuages, tenements and hereditaments, houses and buildings, of any tenure."

Sect. 2.

Definitions.

2. For the purpose of this Act "local authority" means any county council, council of a municipal borough, sanitary authority, or any body having power to make a rate for public purposes or by the issue of any precept, certificate, or other document to require payment from some authority or officer of money which may render necessary the making of any such rate; and "assurance" has the same meaning as in the Mortmain and Charitable Uses Act, 1888 (*a*).

Extent of Act.

3. This Act shall not apply to Scotland or Ireland.

Short title.

4. This Act may be cited as the Mortmain and Charitable Uses Act Amendment Act, 1892.

CHARITY INQUIRIES (EXPENSES) ACT, 1892.

(55 & 56 VICT. CAP. 15.)

An Act to authorise the Councils of Counties and County Boroughs to contribute to the Expenses of Inquiries into certain Charities.

[20th June, 1892.]

* * * * *

Power for council of county or county borough to contribute to expenses of charity inquiries.

1.—(1.) The council of any county or county borough may, if they think fit, pay or contribute towards the expenses of any inquiry conducted by the Charity Commissioners into any charities which are by the trusts governing their administration expressly appropriated in whole or in part for the benefit of their county or county borough, or of any part thereof (*b*).

(2.) The payment or contribution may be made out of the county fund (*c*), or in the case of a county borough out of the borough fund or borough rate.

Short title

2. This Act may be cited as the Charity Inquiries (Expenses) Act, 1892.

(*a*) "Assurance" is defined by s. 10 of the Mortmain, etc., Act, 1888, to include "a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instrument." But the present Act, as pointed out in the previous note, applies to assurances by deed only.

(*b*) The powers and duties of the Charity Commissioners as to holding inquiries into the nature and objects of charities, their administration, management, and results, and the value, condition, and application of their property and income are contained in the Charitable Trusts Acts, 1853 to 1894, viz., 16 & 17 Vict. c. 137 (1853); 18 & 19 Vict. c. 124 (1855); 23 & 24 Vict. c. 136 (1860); 25 & 26 Vict. c. 112 (1862); 32 & 33 Vict. c. 110 (1869); 50 & 51 Vict. c. 49 (1887); 54 & 55 Vict. c. 17 (1891); and 57 & 58 Vict. c. 35 (1894).

(*c*) A contribution made by a county council under this Act will be general expenses of the county council. Local Government Act, 1888, s. 68 (2), *ante*, p. 130.

WEIGHTS AND MEASURES (PURCHASE) ACT, 1892.

(55 & 56 Vict. Cap. 18.) (*d*).

An Act for authorising County and Borough Councils to purchase Franchises of Weights and Measures. [20th June, 1892.]

* * * * *

Power for county or borough council to purchase franchise of weights and measures.

1.—(1.) Where the council of a county or borough are the local authority for the execution of the law relating to weights and measures (*e*), the council and the owner of any franchise of weights and measures (*f*) may, with the approval of the Board of Trade, enter into and carry into effect any agreement for the sale to and purchase by the council of all or any of the powers and authorities of the franchise owner within the area under the council as such local authority, and on any such purchase being completed the powers and authorities purchased shall cease to be exercised.

(2.) For the purpose of any such purchase the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and the franchise shall be deemed land within the meaning of those Acts.

51 & 52 Vict. c. 41.

38 & 39 Vict. c. 55.

(3.) A county council may borrow money for the purposes of this Act in accordance with the Local Government Act, 1888 (*g*), and a borough council may borrow money for the purposes of this Act in accordance with the Public Health Act, 1875.

(4.) The expenses incurred by a borough council under this Act shall be defrayed out of the borough fund or borough rate, and any money borrowed by such a council shall be borrowed on the security of the borough fund or borough rate.

(5.) For the purposes of this Act the expression "franchise of weights and measures" shall include the authority which any court-leet for any hundred or manor, or any jury or ward inquest, or the lord or lady of any manor, or any other person, may have for inspecting, examining, regulating, verifying, stamping, adjusting, seizing, breaking, or destroying any weights or measures, or weighing instrument or measuring instrument.

(*d*) See the Weights and Measures Act, 1889, *ante*, p. 409, and the Weights and Measures Act, 1893, and the Weights and Measures (Metric System) Act, 1897, *post*.

(*e*) By virtue of s. 3 (xiii) of the Local Government Act, 1888, *ante*, p. 12, the county council is the local authority under the Weights and Measures Acts, except (i) in a county borough (*ib.* s. 31); (ii) in the larger quarter sessions boroughs (*ib.* s. 35); and (iii) in the larger boroughs not being quarter sessions boroughs mentioned on p. 87, *ante*, in which cases the local authority is the council of the borough. See also the note to the Weights and Measures Act, 1893, *post*, p. 574.

(*f*) The expression "franchise of weights and measures" is defined, sub-s. (5), *infra*.

(*g*) As to borrowing by a county council, see s. 69 of the Local Government Act, 1888, *ante*, p. 132. The expenses of a county council under this Act are "general expenses," *ib.* s. 68 (2).

Sect. 2.

Provision as to certain boroughs.

2. Where the council of a county have in pursuance of this Act acquired any franchise of weights and measures in respect of any area within a borough the council of which are not at the time of such acquisition the local authority for the execution of the law relating to weights and measures, the council of that borough shall not become such a local authority (*h*) until they have recouped to the council of the county such proportion of the expenses of the county council in acquiring the franchise and in executing the law relating to weights and measures as may be agreed on between the respective councils, or may, in case of difference, be determined by the Board of Trade.

Extent of Act.

3. This Act shall not extend to Scotland or Ireland.

Short title and construction. 41 & 42 Vict. c. 49. 52 & 53 Vict. c. 21.

4. This Act may be cited as the Weights and Measures (Purchase) Act, 1892, and shall be read as one with the Weights and Measures Acts, 1878 and 1889.

TECHNICAL AND INDUSTRIAL INSTITUTIONS ACT, 1892.

(55 & 56 Vict. Cap. 29) (*i*).

An Act to facilitate the Acquisition and Holding of Land by Institutions for promoting Technical and Industrial Instruction and Training. [27th June, 1892.]

* * * *

Short title.

1. This Act may be cited as the Technical and Industrial Institutions Act, 1892.

Definition of institution.

2. This Act applies to every institution established, whether before or after the passing of this Act, for effecting all or any of the following purposes, that is to say :—

(*h*) Having regard to s. 37 of the Local Government Act, 1888, *ante*, p. 82, it appears that a borough council can only *become* the local authority for the purposes of the Weights and Measures Acts, if the borough is constituted into a county borough under s. 54 of that Act.

(*i*) Under this Act a county council may become the governing body of an institution established for any of the purposes mentioned in s. 2, and may acquire any land required for an institution of which they are the governing body. It is to be noticed that the Act does not deal with the question of how funds are to be provided for the purchase of the land, and contains no borrowing powers; it appears, in fact, to contemplate the existence of an endowment applicable for the purpose. If, however, the institution is established for the purpose of giving technical instruction (see s. 2 (i), it would appear that a county council may, under the powers given to them by the Technical Instruction Act, 1889 (*ante*, p. 435), endow it out of the county fund, and borrow money for the purpose of acquiring the land. See s. 4 (4) (a) of that Act. There is no power to take land compulsorily for the purposes of this Act. Voluntary conveyances for the purposes of the Act by limited owners are contemplated by the Act, but subject to restrictions which render this power very difficult to exercise. See s. 7, *infra*.

Sect. 2 (i).

52 & 53 Vict. c. 76.

(i.) To give technical instruction within the meaning of the Technical Instruction Act, 1889 (*k*);

(ii.) To provide the training, mental or physical, necessary for the above purpose.

(iii.) In connection with the purposes before mentioned, to provide workshops, tools, scientific apparatus and plant of all kinds, libraries, reading rooms, halls for lectures, exhibitions, and meetings, gymnasiums, and swimming baths, and also general facilities for mental and physical training, recreation, and amusement, and also all necessary and proper accommodation for persons frequenting the institution;

and every such institution is in this Act referred to as the institution.

Governing body.

3.—(1.) The governing body (*l*) of the institution may be any body corporate, council, public authority, local authority, commissioners, directors, committee, trustees, or other body of persons, corporate or unincorporate, willing to undertake, or elected or appointed for the purpose of undertaking, or having, the government and management of the institution.

(2.) The governing body may make bye-laws and rules for the management and conduct of the institution.

Incorporation of 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106.

4. The Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860 (except the provisions of those Acts relating to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by promoters of the undertaking, and with respect to determining the amount of purchase money by valuation of surveyors), are hereby incorporated in this Act.

Power to take land by agreement.

5. The governing body of the institution may by agreement enter on, take, and use any land required by them for the purposes of the institution, and such land may be conveyed either to the governing body or to trustees for the governing body (*m*).

Conveyance may be by way of sale, exchange, or gift.

6.—(1.) A conveyance of land may be made to the governing body of the institution or to trustees for the governing body either for valuable consideration in money, or in consideration of a rentcharge,

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(*k*) See this Act, *ante*, p. 435. It would seem that a county council might itself establish an institution for this purpose under the Act of 1889, and might then proceed under this Act with respect to it. But this Act does not itself enable a county council to establish or endow any institution.

(*l*) It seems clear that under this section a county council may be the governing body of an institution to which the Act relates, if the scheme or instrument establishing the institution so provides. If as suggested in note (*k*), *supra*, the institution has been founded by the county council, they may themselves be the governing body, or appoint a committee for that purpose.

(*m*) If the governing body is incorporated, it will probably be found convenient to convey the land to them, and where they are unincorporate, to convey to trustees for them.

or by way of exchange for other land, or, subject as in this Act provided, by way of free gift, and without any consideration. Sect. 6 (1).

(2.) A conveyance under this Act by a person having an equitable estate shall operate to pass any bare outstanding legal estate vested in a trustee (*n*).

Conveyances by limited owners.

7.—(1.) A conveyance under this Act by a person not entitled to dispose absolutely for his own benefit (*o*) of the land proposed to be conveyed (other than a conveyance on a sale or exchange for the best consideration in money, or by way of rentcharge, or in land to be reasonably obtained) shall be subject to the following restrictions and provisions :—

(a.) It shall not in itself, or in addition to any land conveyed under this Act by the same person, comprise more than two acres in the whole in any one county, city, or borough :

(b.) It shall be made either with the consent of the person, if any, entitled to the next estate of freehold in remainder for the time being, or with the approval of the High Court of Justice.

(2.) Every application to the Court for an order approving a conveyance under this Act shall be by summons in chambers, and shall, subject to the Acts regulating the Court, be assigned to the Chancery Division (*p*).

(3.) On any such application the Court may direct notice to be served on such persons, if any, as it thinks fit.

(4.) On any such application the Court shall have regard to the circumstances of the settled estate, the wants of the neighbourhood, and the interests of the persons entitled in remainder, and the Court, if it thinks fit under all the circumstances of the case, may make an order approving the proposed conveyance. Such order, if the Court thinks fit, may be made on such terms and conditions, if any, as the Court thinks proper ; but no such order shall be made if the

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(*n*) This is a novel provision. Its effect is to make unnecessary the concurrence of the trustee in the conveyance, for the purpose of vesting the bare outstanding legal estate in the governing body or their trustees.

(*o*) This section appears to contemplate, although it does not expressly authorize, voluntary conveyances of lands for the purposes of the Act by limited owners, such as tenants for life. It does not expressly amend or even refer to the Settled Land Act, 1882, under which a tenant for life has large powers of selling the settled land, but subject to the provision that "every sale shall be made at the best price that can reasonably be obtained" (see s. 4 of that Act, and compare s. 74 of the Housing of the Working Classes, 1890). But it imposes certain restrictions on such conveyances (besides the limitation as to quantity contained in clause (a), *infra*) for the purpose of protecting the interests of the remaindermen. The consent either of the person entitled to the next estate, if freehold in remainder, or of the court, must be obtained, and the consent of the court cannot be given if any remainderman opposes, unless the court thinks his opposition unreasonable, or that his interest is so remote that it may properly be disregarded (sub-s. (4), *infra*). It is difficult to see in what circumstances the opposition of a person to a proposal for the giving away of his property could be regarded as unreasonable.

(*p*) As to chambers in the Chancery Division, see Rules of the Supreme Court, Order LV.

Sect. 7 (4).

application is opposed by any person entitled in remainder, unless the Court is of opinion that the opposition is unreasonable, or the interest of the person opposing so remote that it may properly be disregarded (*o*).

Institution to be public.

8. Every institution for which land has been acquired under an exercise of the powers conferred by this Act shall be open generally either to all persons or to all persons within specified limits as to age, qualification (*r*), or otherwise, and either without payment or on specified terms as to times of attendance and payment of subscriptions or fees or otherwise, but so that no preference be given to any person or class of persons within the specified limits.

Site may be sold or exchanged.

9.—(1.) Land acquired under the powers of this Act shall not be used (*s*) otherwise than for the purposes of an institution within the meaning of this Act, but, with the consent of the Charity Commissioners, may be sold or may be exchanged for other land.

(2.) The governing body or their trustees may execute conveyances and do all acts necessary to effectuate a sale or exchange.

(3.) On a sale, the receipt of the governing body or of the trustees for the governing body shall be a sufficient discharge for the purchase money, and such money shall, as soon as convenient, be invested in the purchase of other land.

(4.) Land purchased or taken in exchange under this section shall be devoted to the same purposes and be liable to the same incidents as originally were applicable to or affected the land sold or given in exchange.

(5.) Money arising by sale may, until reinvested in the purchase of land, be invested in the names of the governing body or of trustees for the governing body in any manner in which trust money is for the time being by law authorised to be invested (*t*); and all dividends and income on investments so made and all the resulting income shall be invested in like manner so as to accumulate in the way of compound interest, and be added to capital until the capital is reinvested in the purchase of land.

Parts I. and II. of 51 & 52 Vict. c. 42, and part of 54 & 55 Vict. c. 73, not to apply.

10.—(1.) Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to conveyances or to assurances by will made under or for the purposes of this Act,

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(*r*) This section does not prohibit a religious test; but a county council providing funds under the Technical Instruction Act, 1889, for the purposes of an institution to which the present Act relates would, of course, be bound by the provisions of s. 1 of that Act, *ante*, p. 435.

(*s*) *Scil.*, until it has been sold under this section.

(*t*) The investments authorized for trust funds are stated in the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 1.

but every such conveyance or assurance shall be enrolled as soon as may be in the books of the Charity Commissioners (*u*). Sect. 10 (1).

(2.) Any corporate body may acquire and shall be entitled to hold and retain land for the purposes of this Act without any licence in mortmain.

11. This Act shall not extend to Scotland. Extent of Act.

SMALL HOLDINGS ACT, 1892.

(55 & 56 VICT. CAP. 31) (*x*).

An Act to facilitate the acquisition of Small Agricultural Holdings.

[27th June 1892.]

* * * * * *

PART I.

PROVISION OF SMALL HOLDINGS BY COUNTY COUNCILS.

1.—(1.) If the council of any county are of opinion that there is such a demand for small holdings in their county as justifies them in putting into operation this Part of this Act (*y*), the council may, subject to the provisions of this Act, acquire any suitable land for the purpose of providing small holdings for persons who desire to buy and will themselves cultivate the holdings. Power for county council to acquire land for small holdings.

(2.) The expression "small holding" for the purposes of this Act shall mean land acquired by a council under the powers and for the purposes of this Act, and which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is of an annual value for the purposes of the income tax not exceeding fifty pounds.

(*u*) This constitutes a wider exemption from the Mortmain Acts than that contained in s. 6 of the Mortmain, etc., Act, 1888, in favour of assurances of land for public parks, school houses, and museums. The quantity of land which may be assured by will under that section is limited, while under the text any quantity of land may be devised for the purposes of this Act, and land so devised is not required to be sold within a year from the death of the testator, as is the case with land assured by will under the Mortmain, etc., Act, 1891. The books of the Charity Commissioners are those kept under s. 42 of the Charitable Trusts Act, 1855 (18 & 19 Vict. c. 124), which section provides for certified copies being received as evidence of the contents of documents so enrolled.

(*x*) This Act enables county councils, subject to certain conditions, to acquire land for the purpose of providing small agricultural holdings, and to sell, or under some circumstances to let such holdings to persons desiring to cultivate them. The expression "small holding" is defined by s. 1 (2). Section 16 of the Act is amended in a small particular by s. 6 (4) of the Local Government Act, 1894, *post*.

(*y*) The question whether the demand exists will be determined by the opinion of the committee appointed under s. 5, *post*. It will be noticed that this whole clause is permissive, and is subject to the other provisions of the Act, including the restriction as to expenditure contained in s. 18, *post*. It may be noticed that the Act does not define the class of the community from which the demand must proceed; the benefits of the Act are not confined to the labouring population as is the case with the Allotments Acts.

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County council may lease land in lieu of purchasing.

2. Where land through its proximity to a town or suitability for building purposes, or for any other special reason has a prospective value which in the opinion of the county council is too high to make its purchase for agricultural purposes desirable, the council may hire the land on lease or otherwise for the purpose of letting it in small holdings in accordance with the provisions of this Act.

Purchase of land and adaptation of it for small holdings.

38 & 39 Vict. c. 55.

3.—(1.) For the purpose of the purchase of land under this Act by a county council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, which provisions shall not apply for the purposes of this Act; and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the county council were referred to therein (*z*).

(2.) The county council may, if they think fit, before sale or letting adapt for small holdings any land acquired under this Act by dividing and fencing it, making occupation roads, and executing any other works, such as works for the provision of drainage or water supply, which can in the opinion of the council be more economically and efficiently executed for the land as a whole.

(3.) The county council may also, if they think fit, as part of the agreement for the sale or letting of a small holding, adapt the land for a small holding by erecting thereon such buildings, or making such adaptations of existing buildings, as in their opinion are required for the due occupation of the holding, and cannot be made by the purchaser or tenant.

Sale or letting of small holdings.

4.—(1.) The county council shall apportion the total cost of the acquisition of the land, and of any adaptation thereof, among the several holdings in such manner as seems just, and shall, save as herein-after mentioned, offer the small holdings for sale in accordance with rules under this Act (*a*).

(2.) Where the county council are of opinion that any persons desirous of themselves cultivating small holdings are unable to buy on the terms fixed by this Act, or where the land has been hired by the council on lease or otherwise, the council may, in the case of any small holding which either does not exceed fifteen acres in extent, or if exceeding fifteen acres is of the annual value for the purpose of the income tax not exceeding fifteen pounds, instead of offering it for sale, offer to let it in accordance with rules under this Act (*b*).

Provided that a tenant of any small holding may, before the expiration of his tenancy, remove any fruit and other trees and

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(*z*) Land cannot be taken compulsorily under this Act. Section 178 of the Public Health Act, 1875, enables the Chancellor and Council of the Duchy of Lancaster to sell lands to a local authority; the text gives them a like power as to the sale of lands for the purposes of this Act.

(*a*) These rules are made by the county council under s. 7, *post*.

(*b*) The primary intention of the Act is that the small holdings shall be sold out and out; it is only where persons desirous of cultivating such holdings are unable to buy, that the power to let them arises.

bushes planted or acquired by him for which he has no claim for compensation, and remove any toolhouse, shed, greenhouse, fowl-house, or pigsty built or acquired by him for which he has no claim for compensation (*c*). Sect. 4 (2).

(3.) The county council shall have power to sell, or, in the case of small holdings which may be let, to let one or more small holdings to a number of persons working on a co-operative system, provided such system be approved by the county council.

(4.) The cost of acquisition and adaptation shall for the purposes of this section include every expense incurred by the council in relation to the land, inclusive of any allowance to any officers of the council for work done in relation thereto.

Committee of and inquiry by council.

5.—(1.) Any county council may, and every county council not being a council of a county borough shall, appoint a committee to consider whether the circumstances of the county justify the council in putting into operation this Part of this Act (*d*).

(2.) Any one or more county electors may present a petition to the council of their county, alleging that there is a demand for small holdings in the county, and praying that this Part of this Act may be put in operation, and thereupon the petition shall be referred to the committee appointed under this section, who, on being satisfied that the petition is presented in good faith and on reasonable grounds, shall forthwith cause an inquiry into the circumstances to be made and shall report the result to the council.

(3.) If any councillor representing or alderman residing in any electoral division of a county in which it is alleged that there is a demand for small holdings is not a member of the committee, he shall be added to the committee for the consideration of the alleged demand.

Regulations as to purchase money and sale.

6.—(1.) The purchase money for each small holding sold by the county council shall include the costs of registration of title, but shall not include any expense incurred by the purchaser for legal or other advice or assistance (*e*).

(*c*) A claim for compensation in respect of the matters here specified might arise under the Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 61), or the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (50 & 51 Vict. c. 26), or possibly under the Market Gardeners' Compensation Act, 1895 (58 & 59 Vict. c. 27). Where a claim for compensation exists, the tenant will not apparently have the rights mentioned in the text.

(*d*) This committee, like that under the Allotments Act, 1890, *ante*, p. 518, is intended to be a standing committee of the county council. It will be noticed that the appointment of this committee is obligatory in the case of every county council, except councils of county boroughs. As to the constitution of the committee for the purposes of considering any particular allegation of a demand under this section, the requirements of sub-section (3) should be noticed.

(*e*) Section 10, *infra*, requires the county council to apply under the Land Transfer Act, 1875, for their registration as proprietors of land purchased by them under this Act, and that section is amended by s. 19 of the Land

Sect. 6 (2).

(2.) Every purchaser shall, within such time, not less than one month after the purchase, as is fixed by rules under this Act, complete the purchase.

(3.) On such completion he shall pay not less than one fifth of the purchase money (*f*).

(4.) A portion representing not more than one fourth of the purchase money may, if the county council think fit, be secured by a perpetual rentcharge which shall be redeemable in manner directed by section forty-five of the Conveyancing and Law of Property Act, 1881, with respect to rentcharges to which that section applies (*g*).

44 & 45 Vict. c. 41.

(5.) The residue (if any) of the purchase money shall be secured by a charge on the holding in favour of the council, and shall either be repaid by half-yearly instalments of principal with such interest, and within such term not exceeding fifty years from the date of the sale, as may be agreed on with the council, or shall if the purchaser so requires, be repaid with such interest and within such term as aforesaid by a terminable annuity payable by equal half-yearly instalments. The amount for the time being unpaid may at any time be discharged, and any such terminable annuity may at any time be redeemed, in accordance with tables fixed by the county council (*h*).

Transfer Act, 1897, *post*. The costs of registration referred to in the text seem to be the costs of the transfer in the Land Registry of the small holding from the county council to the purchaser ; these costs are, it seems, to be paid by the county council out of the purchase money, which, of course, should be calculated so as to cover them. The costs of the land certificate to be issued to the purchaser from the county council were (by Rule 21 of the Land Registry (Small Holdings) Rules, 1892) included in the "costs of registration of title," mentioned in the text. But new rules under the Land Transfer Act, 1897, will, no doubt, shortly be issued.

(*f*) There is nothing apparently to prevent the county council from requiring more than a fifth or even the whole of the purchase money to be paid on completion.

(*g*) Section 45 of the Conveyancing Act, 1881, provides for the redemption of rentcharges issuing out of land ; the owner of the land (in the present case the purchaser of the small holding) may, in writing, request the Board of Agriculture (formerly the Copyhold Commissioners) to certify the amount of money in consideration whereof the rent may be redeemed. The Board are required to give this certificate (under their seal), and where the owner of the rent is absolutely entitled to it (as would be the case with a county council acting under the text), the owner of the land may, after serving one month's notice on the owner of the rent (viz., the county council), pay or tender to him the certified amount, and on proof to the board that payment or tender has been so made, they must certify that the rent is redeemed ; that certificate is final and conclusive, and the land is thereby absolutely freed and discharged from the rent. It is believed that in the absence of special circumstances, twenty-five years' purchase of the rent is the usual price for redemption fixed in this manner.

(*h*) The period of repayment, and the amount of the interest, will practically be fixed by the county council ; they are, however, bound to accept repayment of the sum due or redemption (in accordance with their own tables) of the annuity at any time, although the period originally fixed has not expired, and they do not appear to be entitled to any particular length of notice of such repayment or redemption.

(6.) The council may, if they think fit, agree to postpone for a term not exceeding five years the time for payment of all or any part of an instalment either of principal or interest or of a terminable annuity, in consideration of expenditure by the purchaser which, in the opinion of the council, increases the value of the holding, but shall do so on such terms as will, in their opinion, prevent them from incurring any loss (*i*). Sect. 6 (6).

(7.) A small holding may be sold subject to such rights of way or other rights for the benefit of other small holdings as the council consider necessary or expedient.

Rules as to mode and conditions of sale.

7. Every county council acquiring land under this Act shall make rules for carrying into effect this Act, except as otherwise provided, and in particular—

(a) as to the manner in which holdings are to be sold or let or offered for sale or letting; and

(b) as to the notice to be given of the offer for sale or letting; and

(c) for guarding against any small holding being let or sold to a person who is unable to cultivate it properly, and otherwise for securing the proper cultivation of a holding.

List to be kept by county council.

8. Every county council shall keep a list of the owners and occupiers of small holdings sold or let by them, and a map or plan showing the size, boundaries, and situation of each small holding so sold or let.

Conditions affecting small holdings.

9.—(1.) Every small holding sold by a county council under this Act shall for a term of twenty years from the date of the sale, and thereafter so long as any part of the purchase money remains unpaid, be held subject to the following conditions:—

(a.) That any periodical payments due in respect of the purchase money shall be duly made;

(b.) That the holding shall not be divided, subdivided, assigned, let, or sublet without the consent of the county council;

(c.) That the holding shall be cultivated by the owner or occupier as the case may be, and shall not be used for any purpose other than agriculture;

(d.) That not more than one dwelling-house shall be erected on the holding;

(*i*) It is in the discretion of the county council whether they will act or not under this clause, but if they do so they are bound to make such conditions as will prevent them from incurring loss.

(*k*) At the end of twenty years from the sale, or if the purchase money is not then all paid, then, at the date when it is all paid, a small holding will be freed from these conditions; but see s. 11, *post*, as to the right of repurchase arising in certain circumstances. The conditions do not in terms prohibit the mortgage or settlement of a small holding, but they make such transactions impossible. An entry is made in the register at the Land Registry, showing that the holding registered is subject to then conditions. See the Land Registry (Small Holdings) Rules, 1892, r. 19.

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(e.) That any dwelling-house erected on the holding shall comply with such requirements as the county council may impose for securing healthiness and freedom from overcrowding;

(f.) That no dwelling-house or building on the holding shall be used for the sale of intoxicating liquors;

(g.) In the case of any holding on which, in the opinion of the county council, a dwelling-house ought not to be erected, that no dwelling-house shall be erected on the holding without the consent of the county council.

(2.) If any such condition is broken, the council may, after giving the owner an opportunity of remedying the breach, if it is capable of remedy, cause the holding to be sold.

(3.) If on the decease of the owner while the holding is subject to the conditions imposed by this section, the holding would, by reason of any devise, bequest, intestacy, or otherwise, become subdivided, the council may require the holding to be sold within twelve months after such decease to some one person, and if default is made in so selling the holding, the council may cause the holding to be sold (*l*).

(4.) Any sale by the county council under this section may be made either subject to the charge in respect of purchase money or free, wholly or partly, from that charge, and in either case the provisions of this Act with respect to the purchase money shall apply in like manner as if the sale were the first sale of a small holding under this Act (*m*).

(5.) The proceeds of the sale shall be applied in discharge of any unpaid purchase money for the holding or redemption of any rent-charge or terminable annuity which is not to continue a charge on the holding, and, subject as aforesaid, shall be paid to the person appearing to the council to be entitled to receive the same (*m*).

(6.) The county council may, under special circumstances, to be recorded in their minutes, sell or consent to the sale under this section of a small holding free from all or any of the conditions

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(*l*) A devise or bequest of a small holding to one individual is unobjectionable.

(*m*) Under sub-ss. (4) and (5) a holding may be sold subject to the payment of any balance of purchase money remaining payable in respect of it, or free wholly or partly from such charge, and in the latter case, the price must be sufficient to discharge the out-standing purchase money, or, if it has taken the form of an annuity under s. 6 (5), to redeem the annuity. The sale is to be conducted by the county council, and they are, it seems, to receive the purchase money of the new purchaser. After retaining a sum sufficient to discharge any outstanding balance of the original purchase money (or to redeem the annuity), they are to pay the proceeds of sale to the person appearing to them to be entitled thereto. This latter provision throws a somewhat onerous duty on the county council; some provision might have been expected for the protection of the new purchaser who pays his purchase money to the county council, and some power to the county council to deduct from the proceeds of sale, the costs incurred by them in carrying it out, but it is conceived that "proceeds of sale" must be read as meaning net proceeds after paying all expenses.

imposed by this section, and may give such consent on such terms as they think fit (*n*). Sect. 9 (6)

(7.) Every small holding let by a county council under the foregoing provisions of this Act shall be held subject to the conditions on which it would under this section be held if it were sold, except so far as those conditions relate to the purchase money; and if any such condition or any term of the letting is broken the council may, after giving the tenant an opportunity of remedying the breach (if it is capable of remedy) determine the tenancy.

(8.) Nothing in or done under this section shall derogate from the effect of any building or sanitary byelaws for the time being in force.

Registration of title to small holdings. 38 & 39 Vict. c. 87.

10.—(1.) When a county council have purchased land under this Act, they shall apply for their registration as proprietors thereof with an absolute title under the Land Transfer Act, 1875 (*o*).

(2.) Rules under the Land Transfer Act, 1875, may—

(a) adapt that Act to the registration of small holdings, with such modifications as appear to be required; and

(b) on the application and at the expense of a county council provide, by the appointment of local agents or otherwise, for carrying into effect the objects of this section.

Right of purchase, if land diverted from agriculture.

11. If at any time after the restrictive conditions imposed by this Act have ceased to attach to a small holding, the owner of the holding desires to use the holding for purposes other than agriculture, he shall before so doing, whether the holding is situate within a town or built upon or not, offer the holding for sale, first to the county council from whom the holding was purchased, next to the person or persons (if any) then entitled to the lands from which the holding was originally severed, and then to the person or persons whose lands immediately adjoin the holding, and sections one hundred and twenty-seven to one hundred and thirty of the Lands Clauses Consolidation Act, 1845, shall apply as if the owner of the small 8 & 9 Vict. c. 18.

(*n*) "Special circumstances" would, it is conceived, exist where it was found impossible to find a purchaser willing to take the land, subject to the conditions which would attach to it under this section as a small holding.

(*o*) Registration with an absolute title under the Land Transfer Act, 1875, involves a strict investigation of title in the Registry, and is by no means lightly granted. The Land Registry (Small Holdings) Rules, 1892, made under this section, provided for provisional registration with less than an absolute title pending further investigation, and also facilitated registration where the title had been investigated by a conveyancing counsel, and his report is submitted to the Registry. But now under the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 19, *post*, a county council applying for registration under the provision in the text may be registered with any such title as is authorized by the Land Transfer Act, 1875, viz., absolute, qualified, or possessory; a purchaser of a small holding from the county council is to be registered with an absolute title, subject to such incumbrances as may be created under this (Small Holdings) Act. The same section provides for the recovery of damages from the county council by a person claiming by title paramount.

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holding were the promoter of the undertaking, and the holding were superfluous lands within the meaning of those sections (*p*).

Extension of provisions of 45 & 46 Vict. c. 38.

12. Where a person having the powers of a tenant for life within the meaning of the Settled Land Act, 1882, sells, exchanges, or leases, any settled land to a county council for the purposes of this Act, such sale, exchange, or lease may be made at such a price, or for such consideration, or at such rent as, having regard to the said purposes and to all the circumstances of the case, is the best that can be reasonably obtained (*q*).

Power to limited owner to sell at a fee farm rent.

13. A person having the powers of a tenant for life within the meaning of the Settled Land Act, 1882, may grant the settled land, or a part thereof, to a county council for the purposes of this Act in perpetuity, at a fee farm or other rent secured by condition of re-entry, or otherwise as may be agreed upon (*r*).

Power to attach grazing rights, &c. to small holdings.

14. Where any right of grazing, sheepwalk, or other similar right is attached to land acquired by a county council for the purposes of small holdings, the council may attach any share of the right to any small holding in such manner and subject to such regulations as they think expedient.

Letting of land unsold and sale of

15.—(1.) A county council shall, if practicable, sell or let as small holdings, and in accordance with this Act, any land acquired under

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(*p*) It is difficult to see how s. 127 of the Lands Clauses Act, 1845, can apply to a case under this section; it requires the promoter of the undertaking to sell the superfluous lands within a certain period, and in default of his doing so, the lands are to vest in the adjoining owners in certain proportions. The text clearly does not require the owner of the holding to sell the lands, except in the event of one of the options to purchase being exercised. The effect of the other incorporated sections combined with the text is that the owner of the holding before using it for purposes other than agriculture must offer it for sale, in succession, first to the county council, next to the persons then entitled to the lands (if any) from which the holding was originally severed, if they can after diligent inquiry, be found, and then to the adjoining owners, such persons being capable of entering into a contract for the purchase of the lands; where more persons than one are entitled to the right of pre-emption, the owner of the holding may select to which of them he will first make the offer. Each person to whom the offer is made has six weeks in which to accept the offer; if he refuses or does not accept within the six weeks, his right of pre-emption ceases; a written declaration before a justice by a disinterested person that an offer was made and refused, or not accepted with six weeks, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for purchase, is sufficient evidence of the facts. In the event of any person exercising his right of pre-emption, the price is to be settled in default of agreement by arbitration. See the incorporated sections and notes thereto in Browne and Allan on Compensation, pp. 275—285.

(*q*) This section varies the provisions of the Settled Land Act, 1882, ss. 4, 7, that sales and leases by a tenant for life under that Act must be at the best price, or reserve the best rent that can reasonably be obtained. The limited owners who have the powers of a tenant for life under that Act are enumerated in the Settled Land Act, 1882, s. 58.

(*r*) See note to the preceding section.

this Act, but if the council are of opinion that any such land is not needed for, or is unsuitable for, small holdings, or cannot be sold or let under the foregoing provisions of this Act, or that some more suitable land is available, they may sell or let the land otherwise than under the said provisions, or exchange the land for other land more suitable for small holdings, and may pay or receive money for equality of exchange, and may erect such buildings or execute such other works as will in the opinion of the council enable the land to be sold or let without loss. Sect. 15 (1). superfluous or unsuitable land.

(2.) The council may also, while any sale of a holding is pending in pursuance of this Act, temporarily let or manage the holding for such time and in such manner as they think expedient.

(3.) Sections one hundred and twenty-eight to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845 (relating to the right of pre-emption of superfluous lands) shall apply upon any sale in pursuance of this section before any such buildings or works as aforesaid are erected or executed on the land proposed to be sold, but save as aforesaid the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not apply (*s*). 8 & 9 Vict. c. 18.

16.—(1.) Where a county council provide small holdings they may delegate, with or without restrictions, the powers of the county council under this Act with respect to the adaptation of land for any holdings, and the sale, letting, and management of any holdings to a committee consisting of— Provisions as to management of holdings.

The county councillor representing the electoral division in which the holdings are situate; and

Two other members of the county council; and

Two of the allotment managers (if any) under the Allotments Act, 1887, for the parish or area in which the holdings are situate selected by those managers, or if there are no allotment managers, two persons appointed in manner provided by that Act for the appointment of allotment managers (*t*); or 50 & 51 Vict. c. 48.

If the holdings are situate within the limits of a municipal borough, then, instead of the persons selected or appointed as aforesaid, two members of the borough council;

and in the construction of this Act references to the county council shall, in their application to the powers so delegated, include any such committee. Provided that a county council shall not under this section delegate any powers of making or levying a rate or of borrowing money.

(*s*) The effect of ss. 128—130 of the Act of 1845 is stated in note (*p*), *ante*, p. 554. Sections 131 and 132 relate to the conveyance of the superfluous lands to the purchasers.

(*t*) If the parish has a parish council, two members of the parish council (apparently to be selected by that council) are to be members of the committee in substitution for the allotment managers or other persons here mentioned. Local Government Act, 1894, s. 6 (4), *post*.

Sect. 16 (2).

(2.) The Local Government Act, 1888, shall apply to any committee appointed under this section as if it were appointed under that Act (*u*).

51 & 52 Vict. c. 41.

PART II.

Loans by County Councils to Tenants purchasing Small Holdings.

Power of county council to advance money for purchase of small holding.

17.—(1.) Where the tenant of a small holding has agreed with his landlord for the purchase of the holding the county council of the county in which the holding or any part of it is situate may, if they think fit, advance to the tenant on the security of the holding an amount not exceeding four-fifths of the purchase money thereof (*x*).

(2.) The provisions of this Act with respect to the purchase money secured by a charge on a small holding sold by a county council, and with respect to any small holding so sold, shall apply to an advance made, and a holding purchased under this section, as if the advance was the purchase money, save that the county council shall not guarantee the title of the purchaser of the holding (*y*).

(3.) No advance shall be made by a county council under this section, unless they are satisfied that the title to the holding is good, that the sale is made in good faith, and that the price is reasonable.

PART III.

Supplemental.

Restrictions on powers of council.

18.—(1.) A county council shall not acquire land under this Act save at such price that, in the opinion of the council, all expenses incurred by the council in relation to the land will be recouped out of the purchase money for the land sold by the council, or in the case of land let out of the rent, and shall fix the purchase money or rent at such reasonable amount as will, in their opinion, guard them against loss.

(2.) A county council shall not take any proceedings under this Act whereby the charge for the time being on the county rate, for

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(*u*) As to committees appointed under the Local Government Act, 1888, see ss. 28, 81, 82 of that Act, *ante*, pp. 64, 155, and s. 22 of the Municipal Corporations Act, 1882, *ante*, p. 260.

(*x*) By the definition of "small holding" in s. 1 (2), *supra*, it must be land acquired by a council under this Act. The present section, however, appears to contemplate under that description a piece of land (perhaps within the limits of size or value mentioned in s. 1 (2)) of which the county council is not the owner.

(*y*) This clause appears to make s. 9 applicable to a holding purchased under this section, but it is difficult to say how far that and other sections are to apply. The reference to a guarantee of title is obscure; there is no guarantee by the county council of the title of the purchaser of a small holding, it is, however, believed that the Bill as originally drafted provided for some such guarantee being given, and the saving provision in the text was retained by error after the provision to which it related had been eliminated. See now s. 19 of the Local Transfer Act, 1897, *post*.

the purposes of this Act, including the annual payments in respect of the loans raised for those purposes, is, in the opinion of the council, likely to exceed in any one year the amount produced by a rate of a penny in the pound, and, where the said charge at any time is equal or nearly equal to that amount, no further land shall be purchased in pursuance of this Act, until the charge has been decreased so as to admit of the further purchase without the charge exceeding the said amount. Sect. 18 (2).

Borrowing powers and expenses. 51 & 52 Vict. c. 41. 38 & 39 Vict. c. 55.

19.—(1.) A county council may borrow money for the purposes of this Act in accordance with the Local Government Act, 1888, or, if the council of a county borough, with the Public Health Act, 1875, except that any money so borrowed shall, notwithstanding anything in either of those Acts, be repaid within such period not exceeding fifty years, as the council, with the consent of the Local Government Board, determine in each case. Provided that money borrowed under this Act shall not be reckoned as part of the total debt of a county for the purpose of section sixty-nine, sub-section two, of the Local Government Act, 1888 (*z*).

38 & 39 Vict. c. 89.

(2.) The Public Works Loan Commissioners may, in manner provided by the Public Works Loans Act, 1875, lend any money which may be borrowed by a county council for the purposes of this Act.

(3.) Every loan by the Public Works Loan Commissioners in pursuance of this Act shall bear such rate of interest not less than three pounds two shillings and sixpence per cent. per annum, as the Treasury may authorise as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer.

(4.) Any capital money received by a county council in payment or discharge of purchase money for land sold by them, or in repayment of an advance made by them, shall be applied, with the sanction of the Local Government Board, either in repayment of debt or for any other purpose for which capital money may be applied.

(5.) The expenses incurred by the council of a county borough under this Act shall be defrayed out of the borough fund or borough rate, and any money borrowed by such a council shall be borrowed on the security of the borough fund or borough rate.

Definitions.

20. For the purposes of this Act—

The expressions "agriculture" and "cultivation" shall include horticulture and the use of land for any purpose of

(*z*) As to borrowing by a county council, see s. 69 of the Local Government Act, 1888, *ante*, p. 132. Sub-section (2) of that section prohibits further borrowing (except under a provisional order confirmed by Parliament) where the total debt exceeds, or with the proposed loan will exceed, one-tenth of the annual rateable value of the county, according to the county rate basis. Loans under this Act are not to be reckoned as part of the total debt for the purpose of that restriction. The thirty years prescribed by sub-s. (5) of that section as the maximum period for repayment is extended in the case of a loan under this Act to fifty years.

As to borrowing by a borough council under the Public Health Act, 1875, see ss. 233 *et seq*, of that Act.

Sect. 20.

husbandry, inclusive of the keeping or breeding of live stock, poultry or bees, and the growth of fruit, vegetables, and the like:

The expression "county" shall mean the area under the authority of a county council:

The expression "county council" shall include the council of a county borough, and the expression "electoral division" in its application to a county borough divided into wards shall mean ward, and in its application to a county borough the expression "county rate" shall mean the borough rate or borough fund:

The expression "county elector" shall include "burgess."

In this Act, and in the enactments incorporated with this Act, the expression "land" shall include any right or easement in or over land.

21. * * **22.** * * **23.** * * **24.** * * (*a*).

Extent of Act.

25. This Act shall not apply to Ireland.

Commencement of Act.

26. This Act shall come into operation on the first day of October, one thousand eight hundred and ninety-two.

Short title.

27. This Act may be cited as the Small Holdings Act, 1892.

POLICE RETURNS ACT, 1892.

(55 & 56 VICT. CAP. 38.)

An Act to alter the period for which certain Police Returns are required to be made. [27th June 1892.]

* * * * *

Amendment of provision as to annual police returns. 19 & 20 Vict. c. 69.

1. The annual statement required by section fourteen of the County and Borough Police Act, 1856, shall be made for each calendar year, and shall be transmitted to one of Her Majesty's principal Secretaries of State as soon as may be after the termination of that year (*b*).

(*a*) These sections apply exclusively to Scotland.

(*b*) The statement referred to is a statement of the number of offences reported to the police within the county, the number of persons apprehended by the police, the nature of the charges against them, the result of the proceedings taken thereupon, and any other particulars relating to the state of crime within the county which the justices think it material to furnish (19 & 20 Vict. c. 69, s. 14). The present statute requires the returns to be made for the calendar year instead of for the year ending September 29th, as under the Act of 1856. The duty of transmitting the statement devolves upon the standing joint committee of the quarter sessions, and the county council under the Local Government Act, 1888, s. 9 (1), *ante*, p. 18.

Sect. 2.

2. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-three. Commencement.

3. This Act may be cited as the Police Returns Act, 1892. Short title.

MILITARY LANDS ACT, 1892.

(55 & 56 VICT. CAP. 43) (*c*).

An Act to consolidate and amend certain Enactments relating to the Acquisition of Land for Military Purposes.

[27th June 1892.]

* * * * *

PART I.

Acquisition of Land for Military Purposes.

Powers to purchase land.

1.—(1.) A Secretary of State may purchase land in the United Kingdom under this Act, for the military purposes of any portion of Her Majesty's military forces.

(2.) A volunteer corps may, with the consent of the Secretary of State, themselves purchase land under this Act for military purposes.

(3.) The council of a county or borough may, at the request of one or more volunteer corps, purchase under this Act, and hold, land (*d*) on behalf of the volunteer corps for military purposes (*d*).

(4.) The Secretary of State shall, before giving his consent to the purchase of any land under this Act by a volunteer corps, send an inspector to the land for the purpose of ascertaining its capabilities of being used for military purposes with due regard to the safety and convenience of the public, and shall give or withhold his consent accordingly.

Machinery for purchase of land

2. For the purpose of the purchase of land under this Act, the Lands Clauses Acts (*e*) shall be incorporated with this Act, with the exceptions and additions and subject to the provisions following; (that is to say,)

(1.) There shall not be incorporated with this Act sections sixteen or seventeen of the Lands Clauses Consolidation Act, 1845, or the provisions of that Act with respect to affording access to the special Act.

(*c*) Power is given to a county council by this Act to purchase and hold land on behalf of volunteer or yeomanry corps for military purposes. The Lands Clauses Acts are incorporated with certain exceptions; the customary powers under those Acts can only be put in force by means of a Provisional Order of the Secretary of State made after the procedure mentioned in this Act has been followed, and also requiring confirmation by Parliament. See s. 2, *infra*.

As to the temporary use of land for military manœuvres, see 60 & 61 Vict. c. 43, *post*.

(*d*) "Military purposes" and "land" are defined by s. 23, *infra*.

(*e*) These Acts are fully annotated in Browne and Allan on Compensation.

Sect. 2 (2).

(2.) In the construction of this Act and the incorporated Acts this Act shall be deemed to be the special Act, and the Secretary of State, volunteer corps, or council of a county or borough, as the case may be (in this section referred to as "the purchaser"), shall be deemed to be the promoters of the undertaking.

(3.) Where the Secretary of State is the purchaser—

(a.) The bond required by section eighty-five of the Lands Clauses Consclidation Act, 1845, shall be under the seal of the Secretary of State, and shall be sufficient without the addition of the sureties in those sections mentioned.

(b.) When compensation has been paid to any person in respect of any estate or interest in land taken under this Act, the land shall vest in the Secretary of State for all the estate and interest of that person, including any estate or interest therein held in trust by that person or capable of being conveyed by him in pursuance of any power. Nevertheless the Secretary of State may require that person to execute any conveyance which he might have been required to execute if this Act had not passed; and nothing in this section shall in any manner invalidate any such conveyance when executed.

(4.) The provisions of the incorporated Acts with respect to the purchase of land compulsorily shall not be put in force until a Provisional Order has been made and the sanction of Parliament has been obtained in manner in this Act mentioned.

(5.) One month at the least before the making of the Provisional Order, if the Secretary of State is the purchaser, and before the application for the Order in any other case, the purchaser shall serve, in manner provided by the Lands Clauses Acts, a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any land intended to be so purchased, describing the land intended to be taken, and in general terms the purposes to which it is to be applied, and stating the intention of the purchaser to obtain the sanction of Parliament to the purchase thereof, and inquiring whether the person so served assents or dissents to the taking of his land, and requesting him to forward to the purchaser any objections he may have to his land being taken.

(6.) Where the Secretary of State is the purchaser, he shall, at some time after the service of the notice, cause a public local inquiry to be held by a competent officer into the objections made by any persons whose land is required to be taken, and by other persons, if any, interested in the subject matter of the inquiry.

Sect. 2 (7).

(7.) Where the purchaser is a volunteer corps or the council of a county or borough—

(a.) The corps or council may, if they think fit, on compliance with the provisions of this section with respect to notices, present a petition to a Secretary of State. The petition shall state the land intended to be taken, and the purposes for which the land is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking the land, or who have returned no answer to the notice. The petition shall pray that the corps or council may, with reference to the land, be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, and the prayer shall be supported by such evidence as the Secretary of State requires :

(b.) On receipt of the petition and on due proof of the proper notices having been served, the Secretary of State shall take the petition into consideration, and may either dismiss the same, or direct a public local inquiry to be held by a competent officer as to the propriety of assenting to the prayer of the petition.

(8.) Before a local inquiry is held in pursuance of this section the Secretary of State shall publish a notice of the intention to hold the inquiry—

(a) by affixing copies conspicuously on or in the immediate neighbourhood of the land proposed to be acquired ; and

(b) by advertising the notice once at least in each of two successive weeks in some one and the same local newspaper circulating in the neighbourhood.

(9.) If after the local inquiry has been held the Secretary of State is satisfied that the land ought to be taken, he may make a Provisional Order to that effect, authorising the taking of the land either by himself or by a volunteer corps or by a council of a county or borough, as the case may be, and may submit a Bill to Parliament for the confirmation of the Provisional Order, but the Provisional Order shall not be of any effect unless and until it is confirmed by Parliament.

(10.) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against anything comprised therein, the Bill, so far as relates to the order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

Power to let land.

3. Land acquired under this Act may be let by a volunteer corps, or if acquired by the council of a county or borough, by that

Sect. 3.

council, in any manner consistent with the use thereof for military purposes (*f*).

Payment of expenses.

4. Any expenses incurred by the council of a county or borough for the purposes of this Act shall be defrayed by the council of a county out of the county fund (*g*), and by the council of a borough out of the borough fund or borough rate.

Power of volunteer corps to borrow.

5.—(1.) A volunteer corps may, with the consent of the Secretary of State, and subject to such conditions as he may impose, borrow such money as may be required for the purpose of the purchase by them of land under this Act.

(2.) The money shall be borrowed on the security of the land acquired by the volunteer corps, and also on the security of any grant to the corps out of money provided by Parliament (*h*).

Powers of borough council to borrow.

38 & 39 Vict. c. 55.

6. The council of a borough may borrow for the purpose of acquiring land under this Act in like manner as they may borrow for the purposes of the Public Health Act, 1875, and the provisions of that Act shall apply accordingly, but the money shall be borrowed on the security of the borough fund or borough rate.

Power for Public Works Loan Commissioners to lend.

38 & 39 Vict. c. 89.

7.—(1.) The Public Works Loan Commissioners may in manner provided by the Public Works Loans Act, 1875, lend any money which may be borrowed for the purposes of this Act, and may so lend on the security authorised by this Act without requiring any other security.

(2.) Every loan by the Public Works Loan Commissioners under this Act shall be repaid within a period not exceeding fifty years, and shall bear interest at a rate not less than three and a half per centum per annum, or such other rate as may be fixed by a minute of the Treasury under section two of the Public Works Loans Act, 1879.

42 & 43 Vict. c. 77.

Provision as to disbandment of corps, &c.

8.—(1.) If a volunteer corps holding land under this Act is disbanded, the land shall, by virtue and subject to the provisions of this section, vest in the Secretary of State from the date of the disbandment, subject to the repayment of any money borrowed for the purchase of the land, and not already repaid, and the sums required for such repayment shall, if and so far as not provided by the sale of the land, be paid out of moneys provided by Parliament for army services.

(*f*) See the definition, s. 23, *infra*.

(*g*) These will be general expenses, see Local Government Act, 1888, s. 68 (2), *ante*, p. 130. No express power to borrow for the purpose of purchasing land is given to county councils by this Act, as is done in the cases of volunteer corps and borough councils by the next two sections. But having regard to s. 69 (1) (b) of the Local Government Act, 1888, *ante*, p. 132, no further powers appear to be necessary.

(*h*) The borrowing powers of a volunteer corps have been extended by the Military Lands Act, 1897 (60 Vict. c. 6).

Sect. 8 (2).

(2.) A certificate of the Secretary of State that land has vested in him under this section shall be conclusive evidence of the fact certified.

(3.) If the volunteer corps on whose behalf land is acquired under this Act by a county or borough council is disbanded, the council may either appropriate the land to any purpose approved by the Local Government Board, or sell it for the best price that can be reasonably obtained, and any money arising from the sale shall be applied towards repaying any money borrowed for the purchase of the land, and so far as not required for that purpose shall be applied to any purpose to which capital moneys are properly applicable, and which is approved by the Local Government Board.

Provided that before so appropriating any such land or before selling any such land, if it is not so appropriated, the council shall offer to sell the same to the person then entitled to the land (if any) from which the same was originally severed, and thereupon sections one hundred and twenty-nine to one hundred and thirty-two, both inclusive, of the Lands Clauses Consolidation Act, 1845, shall apply as if the land were superfluous land and the council were the promoters of the undertaking within the meaning of those sections (*i*).

8 & 9 Vict. c. 18.

Rules as to exercise of powers, &c., by volunteer corps.

26 & 27 Vict. c. 65.

9.—(1.) Rules under section twenty-four of the Volunteer Act, 1863, may provide for the exercise of any powers and the performance of any duty under this Act by any officer of the volunteer corps on behalf of the corps, and may provide generally for the carrying into effect of this Act by a volunteer corps.

(2.) The powers given by section twenty-five of the Volunteer Act, 1863, to the commanding officer for the time being of a volunteer corps and his successors shall include a power to mortgage any land acquired under this Act and to do all things necessary for that purpose.

10. * * * * * (*k*).

Power to lease land held for public purposes.

11.—(1.) Any person, body of persons, or authority holding land for ecclesiastical or public purposes may lease any such land to a Secretary of State or to a volunteer corps for military purposes for any term not exceeding twenty-one years, subject to the following provisions:

(a.) An ecclesiastical corporation sole below the dignity of a bishop shall not grant any such lease without the consent

(*i*) See the incorporated sections and notes in Browne and Allan on Compensation, pp. 284—287. Their effect is stated in the notes to ss. 11, 15 of the Small Holdings Act, 1892, *ante*, p. 554.

(*k*) This section does not affect county councils. It confers certain powers of leasing to the Secretary of State, or to a volunteer corps, land which belongs to the Crown, the Duchies of Lancaster and Cornwall, or certain public departments.

Sect. 11 (1).

in writing of the bishop to whose jurisdiction he is subject, and of the patron of the preferment to which the land belongs, or the guardians or trustees of such patron:

(b.) A lease of parochial property shall be granted under and in accordance with the provisions of section three of the Union and Parish Property Act, 1835, and the Acts amending the same:

5 & 6 Will. 4, c. 69.

(c.) Where the land is vested in any trustees, commissioners, or other body of persons, a majority of a meeting of such trustees, commissioners, or other body of persons duly convened may grant a lease under this section and execute any instrument for that purpose:

(d.) Where the land belongs to an administrative county, the county council may grant a lease under this section with the consent of the Local Government Board.

(2.) A lease under this section shall cease to have effect if the land ceases to be used for military purposes (*l*).

Proof that land has ceased to be used for military purposes.

12. Any land leased under this Act shall be deemed to have ceased to be used for military purposes where there has not been such use for a period of one year, and a certificate of the fact of such non-user is given by a Secretary of State; and the certificate shall be conclusive evidence of the fact of such non-user.

Power to stop or divert footpaths.

13.—(1.) Where a footpath crosses or runs inconveniently or dangerously near to any land leased under this Act, that footpath may, with the consent of the vestry of the parish in which the same is situate, and on the certificate of two justices that the footpath to be substituted is convenient for the public, be stopped up or diverted.

5 & 6 Will. 4, c. 50.

(2.) The provisions of the Highway Act, 1835, as to the obtaining of a certificate and the stopping up or diverting a highway where a person other than the inhabitants or vestry are desirous of stopping up, diverting, or turning a highway shall apply so far as practicable to the obtaining of a certificate, and the stopping up or diverting a footpath under this section; with this exception, that the certificate of the justices shall be conclusive in cases where it states the fact of their having viewed the footpath to be stopped up or diverted, and that the proposed new footpath is convenient for the public (*m*).

PART II. (*n*).

Bye-laws as to Land used for Military Purposes.

Power of Secretary of State to

14.—(1.) Where any land belonging to a Secretary of State or to a volunteer corps is for the time being appropriated by or with the

(*l*) See the definition, s. 23, *infra*, and see also s. 12, *infra*.

(*m*) See ss. 84 to 92 of the Highway Act, 1835, and see also s. 13 (1) of the Local Government Act, 1894, *post*.

(*n*) This part (ss. 14 to 18) relates to the making of bye-laws by the Secretary of State as to the use of land held for military purposes, and for securing the

consent of a Secretary of State for any military purpose, a Secretary of State may make byelaws for regulating the use of the land for the purposes to which it is appropriated, and for securing the public against danger arising from that use, with power to prohibit all intrusion on the land and all obstruction of the use thereof.

make byelaws as to use of land held for military purposes and securing safety of public.

Provided that no byelaws promulgated under this section shall authorise the Secretary of State to take away or prejudicially affect any right of common.

(2.) Where any such byelaws permit the public to use the land for any purpose when not used for the military purpose to which it is appropriated, those byelaws may also provide for the government of the land when so used by the public, and the preservation of order and good conduct thereon, and for the prevention of nuisances, obstructions, encampments, and encroachments thereon, and for the prevention of any injury to the same, or to anything growing or erected thereon, and for the prevention of anything interfering with the orderly use thereof by the public for the purpose permitted by the byelaws.

(3.) For the purposes of this section, "land belonging to a Secretary of State" means land under the management of a Secretary of State, whether vested in Her Majesty or in the Secretary of State, or in a person as trustee for Her Majesty or the Secretary of State; and "land belonging to a volunteer corps" means any land vested in that corps or in any person as trustee for that corps.

Application of byelaws where right of firing acquired.

15. Where a Secretary of State or a volunteer corps has for the time being the right of using for any military purpose any land vested in another person, this Part of this Act shall apply in like manner as if the land were vested in the Secretary of State or volunteer corps, and the same were appropriated for the said purpose, save that nothing therein or in any byelaws made thereunder shall injuriously affect the private rights of any person further or otherwise than is authorised by the grant of the right to use the land.

Bye-laws as to highways.

16.—(1.) A byelaw under this Act shall not interfere with any highway, unless made with the consent of the authority having control of the repair of the roads of the town, district, parish, or other area in which the highway is situate, but where it appears to the authority that any highway crosses or runs inconveniently or dangerously near to any land the use of which can be regulated by byelaws under this Act, the authority may consent to a byelaw providing to such extent as seems reasonable for the temporary diversion from time to time of the highway, or for the restriction from time to time of the use thereof.

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safety of the public. It does not affect county councils, except as regards their duties as to main roads, which may be affected by s. 16. As to the use of land for military manœuvres, and the powers of a county council in relation thereto, see 60 & 61 Vict. c. 43, *post*.

Sect. 16 (2).

(2.) Any such highway, if a footpath, may (without prejudice to any other power of stopping up or diverting the same) be stopped up or diverted in the manner in which a footpath crossing or running inconveniently or dangerously near to any land leased under Part One of this Act may be stopped up or diverted.

Notice and enforcement of byelaws.

17.—(1.) A Secretary of State, before making any byelaws under this Act, shall cause the proposed byelaws to be made known in the locality, and give an opportunity for objections being made to the same, and shall receive and consider all objections made; and when any such byelaws are made, shall cause the boundaries of the area to which the byelaws apply to be marked, and the byelaws to be published in such manner as appears to him necessary to make them known to all persons in the locality; and shall provide for copies of the byelaws being sold at the price of one shilling for each copy to any person who desires to obtain the same.

(2.) If any person commits an offence against any byelaw under this Act, he shall be liable, on conviction before a court of summary jurisdiction, to a fine not exceeding five pounds, and may be removed by any constable or officer authorised in manner provided by the byelaw from the area, whether land or water, to which the byelaw applies, and taken into custody without warrant, and brought before a court of summary jurisdiction to be dealt with according to law, and any vehicle, animal, vessel, or thing found in the area in contravention of any byelaw, may be removed by any constable or such officer as aforesaid, and on due proof of such contravention, be declared by a court of summary jurisdiction to be forfeited to Her Majesty.

(3.) A byelaw under this Act shall be deemed to be a regulation within the meaning of the Documentary Evidence Act, 1868, and may be proved accordingly.

31 & 32 Vict. c. 37.

Byelaws in case of leased land.

18.—(1.) Where land has been leased under Part One of this Act, a byelaw made in respect of that land shall not be inconsistent with any condition contained in the instrument of lease.

(2.) Where land has been leased under Part One of this Act subject to a condition that byelaws relating to the land shall be made with the consent of the lessor, or shall be made by the lessor subject to the approval of the Secretary of State, that condition shall be observed, and the lessor, acting with the approval of the Secretary of State, shall have the same power of making byelaws in relation to the land as is conferred by this Act on the Secretary of State.

PART III.

Supplemental.

Application of Act to yeomanry corps.

19. This Act shall apply in the case of a yeomanry corps as if it were a volunteer corps; and all land acquired by a yeomanry corps shall vest in the commanding officer of the corps for the time bein

and his successors in office with power for him to sue and make contracts and conveyances and to do all other lawful acts relating thereto. Sect. 19.

Power to have compensation settled by arbitration.

20. Where any land is acquired under this Act or for military purposes under any Act with which the Lands Clauses Acts are incorporated, the person or authority acquiring the land may require that the compensation to be paid for the land be settled by arbitration and not by reference to a jury, and thereupon the provisions of the Lands Clauses Acts with reference to arbitration shall, if not already applicable, apply for the purpose of settling the compensation.

21. * * * * *(o)

Saving for acquisition of land under other Acts.

22. All powers given by this Act shall be in addition to any other power to acquire land for military purposes conferred by any Act passed before this Act, and nothing contained in this Act shall prejudicially affect the powers vested in the Secretary of State for War under the Defence Acts and the Acts incorporated therewith.

Interpretation.

23. In this Act the expression "military purposes" includes rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts, targets, batteries, and other accommodation, the storing of arms, military drill, and any other purpose connected with military matters approved by the Secretary of State.

In this Act and the enactments incorporated therewith the expression "land" includes any easement in or over lands, and for the purpose or Part One of this Act includes any right of firing over lands or other right of user.

24—27. * * * * *(p).

Repeal.

28. The Acts mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule: Provided that land acquired in any manner under any enactment repealed by this Act shall be deemed to have been acquired in a similar manner under this Act, and any byelaws made under any enactment so repealed shall be deemed to have been made under this Act.

Short title.

29. This Act may be cited as the Military Lands Act, 1892.

(*o*) This section enables the Secretary of State to erect alignment marks upon the coast, compensation being payable to the owners of lands injuriously affected.

(*p*) Section 24 contains a saving for the New Forest. Sections 25, 26, 27, relate to the application of the Act to Scotland, Ireland, and the Isle of Man respectively.

Schedule.

SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
22 Vict. c. 12. - -	The Defence Act, 1859 - -	Section one.
26 & 27 Vict. c. 65. -	The Voluntcer Act, 1863 - -	Sections thirty-one to forty inclusive.
34 & 35 Vict. c. 86. -	The Regulation of the Forces Act, 1871.	Section seventeen.
48 & 49 Vict. c. 36. -	The Artillery and Rifle Ranges Act, 1885.	The whole Act, except section three.
49 & 50 Vict. c. 5. -	The Drill Grounds Act, 1886 -	The whole Act.
53 & 54 Vict. c. 25. -	The Barracks Act, 1890 - -	Sections two and three.
54 & 55 Vict. c. 54. -	The Ranges Act, 1891 - -	The whole Act, except section eleven so far as that section relates to the acquisition of land under the Defence Act, 1842, and the Acts amending the same.

CORONERS ACT, 1892.

(55 & 56 Vict. Cap. 56.).

An Act to amend the Law in relation to the Appointment of Coroners and Deputy Coroners in Counties and Boroughs.

[28th June 1892.]

* * * * *

Appointment and powers of a deputy coroner of both a county and a borough.

1.—(1.) Every coroner, whether for a county or a borough, shall appoint, by writing under his hand, a fit person approved by the chairman or mayor, as the case may be, of the council who appointed the coroner (*q*), not being an alderman or councillor of such council, to be his deputy, and may revoke such appointment, but such revocation shall not take effect until the appointment of another deputy has been approved as aforesaid.

(2.) A duplicate of every appointment shall be sent to the said council and be kept among the records of the county or borough, as the case may be.

(3.) A deputy may act for the coroner during his illness or during his absence for any lawful or reasonable cause, or at any inquest which the coroner is disqualified for holding, but not otherwise. In the case of a borough coroner the necessity of his so acting shall be certified on each occasion by a justice of the peace, and such certificate shall state the cause of absence of the coroner, be openly read to every inquest jury summoned by the deputy coroner, and be conclusive evidence of the jurisdiction of the deputy to act.

(*q*) The expression "council who appointed the coroner," is explained by sub-s (7), *post*. Where the appointment has been made by or on the recommendation of a joint committee, it seems that the approval of the chairman (or mayor) of one of the councils represented on the committee is sufficient.

(4.) The deputy of a coroner shall, notwithstanding the coroner vacates his office by death or otherwise, continue in office until a new deputy is appointed, and shall act as the coroner while the office is so vacant in like manner as during the illness of the coroner, and one certificate may extend to the period of the vacancy, and he shall be entitled to receive in respect of the period of the vacancy the like remuneration as the vacating coroner.

(5.) For the purpose of an inquest or act which a deputy of a coroner is authorised to hold or do, he shall be deemed to be that coroner, and have the same jurisdiction and powers and be subject to the same obligations, liabilities, and disqualifications as that coroner, and he shall generally be subject to the provisions of the Coroners Act, 1887, and to the law relating to coroners in like manner as that coroner. 50 & 51 Vict. c. 71.

(6.) A council may postpone the appointment of a coroner to fill a vacancy, either generally or in any particular case, for a period not exceeding three months from the date at which that vacancy occurs.

(7.) For the purposes of this section the council who appointed a coroner shall—

(a) where the coroner was, in pursuance of any section of the Local Government Act, 1888, appointed by or on the recommendation of a joint committee, be deemed to be any of the councils who appointed any members of that committee; and 51 & 52 Vict. c. 41.

(b) where a coroner for a district of a county is, in pursuance of subsection four of section thirty-four of the Local Government Act, 1888, appointed by the council of any county borough, be deemed to be that council (*r*).

(8.) In the case of a county coroner who has been elected before the date on which the provisions of the Local Government Act, 1888, as to the appointment of coroners came into force, the council of any county or county borough, in which the district of the coroner is wholly or partially situated, shall for the purposes of this section be deemed to be the council who appointed the coroner.

2. The Acts specified in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned. Repeal.

(*r*) As to the appointment of coroners by county councils, and where the coroner's district extends into more administrative counties than one, by joint committees of county councils, see Local Government Act, 1888, s. 5, *ante*, p. 15. Under s. 34 (4) of the same Act, *ante*, p. 75, the council of a county borough appoints a county coroner where district is wholly situate within the county borough; where it is situate partly within and partly without the borough the county (not the borough) council appoints, but is bound to appoint the person recommended by a joint committee of the county and borough councils if there is such a committee for the purpose of considering who is to be elected. And see, as to coroners in Yorkshire, the Yorkshire Coroners Act, 1897, *post*.

Sect. 3.

Construction of Act and short title.

3. This Act shall be construed as one with the Coroners Act, 1887, and this Act and that Act may be cited together as the Coroners Acts, 1887 and 1892, and this Act may be cited separately as the Coroners Act, 1892.

SCHEDULE.

Session and Chapter.	Short Title.	Extent of Repeal.
45 & 46 Vict. c. 50. -	The Municipal Corporations Act, 1882.	Section one hundred and seventy-two.
50 & 51 Vict. c. 71. -	The Coroners Act, 1887 -	Section thirteen, and in section thirty-three the words "and the appointment of a deputy by "such coroner."

SHOP HOURS ACT, 1892.

(55 & 56 Vict. Cap. 62) (*s*).

An Act to amend the law relating to the Employment of Young Persons in Shops. [28th June 1892.]

Whereas the health of many young persons employed in shops and warehouses is seriously injured by reason of the length of the period of employment:

* * * * *

Short title.

1. This Act may be cited as the Shop Hours Act, 1892.

Commencement of Act.

2. This Act shall come into operation on the first day of September one thousand eight hundred and ninety-two.

Hours of employment in shops.

3.—(1.) No young person (*t*) shall be employed in or about a shop (*u*) for a longer period than seventy-four hours, including meal times, in any one week.

(2.) No young person shall, to the knowledge of his employer, be employed in or about a shop, having been previously on the same day employed in any factory or workshop, as defined by the Factory and Workshop Act, 1878, for the number of hours permitted by the said Act or for a longer period than will together with the time

41 & 42 Vict. c. 16.

(*s*) This Act is amended by 56 & 57 Vict. c. 67, and 58 Vict. c. 5, *post*. A county council is empowered by s. 8, *post*, to appoint inspectors for carrying the Act into execution.

(*t*) See the definition in s. 9, *post*.

(*u*) See the definition of "shop," *post*, s. 9. Where a newsagent occupying a shop for the purposes of his business employed a boy where work was done partly inside the shop and partly in fetching newspapers and delivering them to customers, it was held that the whole employment was "in or about the shop" within the meaning of this section. *Collman* v. *Roberts*, [1896] 1 Q. B. 457; 65 L. J. M. C. 63; 74 L. T. (N.S.) 198; 44 W. R. 445; 60 J. P. 184; 12 T. L. R. 202; 18 Cox C. C. 273.

during which he has been so previously employed complete such number of hours (*x*). Sect. 3.

Notice of hours to be given.

4. In every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act, and stating the number of hours in the week during which a young person may lawfully be employed in that shop (*y*).

Fine for employing persons contrary to the Act.

5. Where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding one pound for each person so employed (*z*).

Power of occupier to exempt himself from fine on conviction of actual offender.

6. Where the employer of any young person is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the said employer proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

Summary proceedings.

7. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered in like manner as offences and fines are prosecuted and recovered under the Factory and Workshop Act, 1878, and sections eighty-eight, eighty-nine, ninety, and ninety-one of the said Act, and so much of section ninety-two thereof as relates to evidence respecting the age of any person (*a*) . . . shall have effect as if re-enacted in this Act and in terms made applicable thereto.

Appointment of inspectors.

8. The council of any county or borough, and in the city of London the common council, may appoint such inspectors as they may think necessary for the execution of this Act within the areas of their

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(*x*) The definitions of "factory" and "workshop" are contained in s. 93 of the Act of 1878. As to the permitted hours of employment, see ss. 10—21 of the same Act.

(*y*) An employer who neglects to exhibit in his shop the notice required by this section does not thereby render himself liable to penalties under s. 5. *Hammond* v. *Pulsford*, [1895] 1 Q. B. 223; 64 L. J. M. C. 63; 71 L. T. (N.S.) 767; 43 W. R. 236; 59 J. P. 533. But a penalty is now imposed by the Shop Hours Act, 1895, *post*.

(*z*) This fine is recoverable summarily. See s. 7, *post*. As to the fine for not exhibiting the notice required by s. 4, see the Shop Hours Act, 1895, *post*.

(*a*) These sections were for the most part repealed by the Summary Jurisdiction Act, 1884, before this Act was passed. A question may therefore arise whether the procedure under this Act is regulated by these sections, regarded as unrepealed and incorporated, or by the Summary Jurisdiction Act, 1884. Words are here omitted relating to Scotland and Ireland only.

Sect. 8. respective jurisdictions, and sections sixty-eight and seventy (*b*) of the Factory and Workshop Act, 1878, shall apply in the case of any such inspector as if he were appointed under that Act, and as if the expression workshop as used in those sections included any shop within the meaning of this Act (*c*).

* * * * *

Interpretation.

9. In this Act, unless the context otherwise requires—

"Shop" means retail and wholesale shops, markets, stalls, and warehouses in which assistants are employed for hire, and includes licensed public-houses and refreshment houses of any kind:

"Young person" means a person under the age of eighteen years:

Other words and expressions have the same meanings respectively as in the Factory and Workshop Act, 1878.

41 & 42 Vict. c. 16.

Exemption of members of the same family, and servants.

10. Nothing in this Act shall apply to a shop where the only persons employed are members of the same family, dwelling in the building of which the shop forms part, or to which the shop is attached, or to members of the employer's family so dwelling, or to any person wholly employed as a domestic servant.

POLICE ACT, 1893.

(56 Vict. Cap. 10) (*d*).

An Act to amend the Police Acts. [9th June 1893.]

* * * * *

Constables employed on fire duty to be deemed to be engaged on police duty.

1. Where a constable belonging to any police force, in pursuance of any general or special direction of the police authority, acts as a fireman or assists in the extinguishment of fire, or in protecting life or property from fire, such constable shall be deemed for the purposes of the Police Act, 1890, to be in the execution of his duty.

2. *Borough police may be employed as fire brigade.* 10 & 11 *Vict.* *c.* 89 (*e*).

(*b*) Section 68 of the Act of 1878 gives to the inspectors wide powers as to entering buildings and the like. Section 70 relates to certificates of the appointment of inspectors. The form of certificate to be furnished to an inspector on his appointment is prescribed by Order of the Secretary of State, dated April 21st, 1893 (St. R. & O. p. 470).

(*c*) The remainder of this section relates only to Ireland. As to payment of salaries and expenses out of the county or borough fund, see 56 & 57 Vict. c. 67, *post*.

(*d*) This Act amends the Police Act, 1890, *ante*, p. 488, in several particulars as to police pensions. The sections which relate exclusively to borough police are omitted. Section 5 enables the police pension fund to be invested in the debentures or mortgages of a county council.

(*e*) Section 2 relates to the employment of borough police as firemen.

Sect. 3 (1).

3.—(1.) Where a pension is in pursuance of the Police Act, 1890, granted to a constable on the scale applicable to partial disability for earning a livelihood, the police authority may, within three years from the grant of the pension, if satisfied by the evidence of some legally qualified medical practitioner or practitioners selected by the police authority that the disability attributable to the injury received in the execution of duty has become total, increase the pension to the amount allowed by the provisions of the scale applicable to total disability (*f*).

Power to increase pension.

(2.) This section shall apply in the case of all pensions granted since the commencement of the Police Act, 1890.

4. The provisions of subsection two of section thirteen of the Police Act, 1890, shall apply to any constable in receipt of a pension who is appointed to any office remunerated out of any parochial, district, or other rate (*g*).

Amendment of 53 & 54 Vict. c. 45, s. 13 (2).

5. A police authority, in addition to the powers of investment conferred by section eighteen of the Police Act, 1890, may invest the capital of the pension fund in debentures or mortgages issued or made by a county council in pursuance of the powers conferred by section sixty-nine subsection eight of the Local Government Act, 1888 (*h*).

Extension of powers of investment of pension fund.

6. In Schedule I. (11) (c) of the Police Act, 1890, for the words ("where a constable has, in the course of the three years next before the date of his retirement or death, been in more than one rank") shall be substituted the words ("where a constable at the date of his retirement or death holds a rank to which he has been promoted within the three years previous") (*i*).

Amendment of Schedule I. 53 & 54 Vict. c. 45.

7. This Act shall be read as one with the Police Act, 1890, and nothing in this Act shall interfere with or diminish the powers of the Secretary of State under section seventeen of that Act (*k*).

Construction of Act and saving.

(*f*) As to the scales applicable to partial disability, see the Police Act, 1890, and Part II. of the First Schedule to that Act, *ante*, pp. 488, 510.

(*g*) The effect of this section read with s. 13 (2) of the Act of 1890, *ante*, p. 495, is that a constable in receipt of a pension who is appointed to an office remunerated out of moneys provided by Parliament or out of a county or borough rate or fund, or out of a parochial, district, or other rate, he is not to receive more of his pension than, together with the remuneration of that office, is equal to one-and-a-half times the remuneration of the office in respect of which the pension was awarded.

(*h*) See s. 18 of the Act of 1890, *ante*, p. 499, and Local Government Act, 1888, s. 69 (8), *ante*, p. 134.

(*i*) See this schedule, *ante*, p. 512, Rule (11) relates to the method of estimating pensions, gratuities, and allowances.

(*k*) See s. 17 of the Act of 1890, *ante*, p. 498, as to the granting or withholding of the certificate of the Secretary of State as to the satisfactoriness of the management and efficiency of a police force and the administration of the pension fund.

Sect. 8.

8. * * * * * (*l*).

Short title.

9. This Act may be cited as the Police Act, 1893; and the Police Acts, 1839 to 1890, and this Act may be cited together as the Police Acts, 1839 to 1893.

WEIGHTS AND MEASURES ACT, 1893.

(56 & 57 VICT. CAP. 19) (*m*).

An Act to amend the Law relating to Weights and Measures.

[29th June 1893.]

* * * * *

Relief of certain boroughs from contribution to county expenses.

41 & 42 Vict. c. 49.
52 & 53 Vict. c. 21.
55 & 56 Vict. c. 18.

1. Where the mayor, aldermen, and burgesses of a borough, not being a county borough, and not having a separate court of quarter sessions, were, on the first day of January one thousand eight hundred and ninety-three, the legally constituted local authority for the purposes of the Weights and Measures Acts, 1878 to 1892, or for the execution of the law relating to weights and measures under any local Act, they shall be paid by the county council of the county in which the borough is situate, once in every year, the proportionate amount contributed towards the expenses incurred by the county council in the execution of those Acts by the several parishes and parts of parishes within the borough, such proportion being calculated according to the values stated in the basis for county rates in force for the time being. Provided that when the amount received by a county council from the execution of those Acts is in excess of the expenditure thereupon, a proportionate part of such excess amount shall be deducted from any sum due to such borough as a recoupment under the Contagious Diseases (Animals) Acts, or the Sale of Food and Drugs Acts respectively (*n*).

Short title and construction.

2. This Act may be cited as the Weights and Measures Act, 1893, and shall be read as one with the Weights and Measures Acts, 1878 to 1892 (*o*.)

Commencement.

3. This Act shall come into operation on the first day of April, one thousand eight hundred and ninety-four.

(*l*) Section 8 contains an amendment of s. 14 of the Towns Police Clauses Act, 1847, and empowers the Secretary of State to make provisional orders for the amendment of the provisions of local Acts as to fire brigades and fire police.

(*m*) This Act applies to a borough with a population exceeding 10,000, but having no separate quarter sessions, where the council of the borough were the local authority for purposes of weights and measures by reason of their having resolved to be such authority, or by reason of their having before 1878 possessed separate standards. It will be observed that neither s. 35 nor s. 39 of the Local Government Act, 1888, applied to such boroughs so far as regarded the Weights and Measures Acts.

(*n*) The sum here referred to is that which is payable by the county to the borough under the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 41, *post*, and under the Sale of Food and Drugs Act, 1879 (42 & 43 Vict. c. 30), s. 9.

(*o*) See also the Weights and Measures (Metric Systems) Act, 1897, *post*.

BARBED WIRE ACT, 1893.

(56 & 57 VICT. CAP. 32) (*p*).

An Act to prevent the use of Barbed Wire for Fences in Roads, Streets, Lanes and other Thoroughfares (*q*). [27th July 1893.]

* * * * *

1. This Act may be cited for all purposes as the Barbed Wire Act, 1893. Short title.

2. In this Act—

The expression "barbed wire" means any wire with spikes or jagged projections; and the expression "nuisance to a Interpretation.

(*p*) This Act concerns county councils in their capacity as highway authorities in respect of main roads. See Local Government Act, 1888, s. 11, *ante*, p. 21. The following cases are in point with reference to the subject matter of this Act, though they were decided before its passing.

A landowner erected upon his own land by the side of a public road in Scotland a fence of barbed wire, and the road trustees brought an action to have it removed on the ground that it was dangerous to persons and cattle lawfully using the road. The fence was placed about three feet from the boundary line between the road and the landowner's property, and stood entirely upon his land. *Held*, that the action lay, but, upon the defendant undertaking so to alter and protect the fence as to remove the danger, the action was dismissed. *Elgin Road Trustees* v. *Innes*, 14 Ct. Sess. Cas. (4th ser.) 48. The occupier of certain land adjoining a public footpath fenced it off from the footpath by barbed wire set back nine feet from the path. *Held*, that he was liable in damages to a man who tore his clothes on the barbs whilst making way for other persons to pass him on the footpath. *Bird* v. *Frost*, 56 J. P. 164. Plaintiff and defendant were adjoining landowners, and defendant was bound to maintain a boundary fence between their lands for their mutual benefit. Defendant caused a gap in the fence to be made up with barbed wire, which was placed three feet within his own boundary. Plaintiff afterwards put a mare into his field, and she injured herself on the wire. *Held*, that the wire was so placed as to be dangerous to cattle lawfully put by the plaintiff into his field, and that defendant was liable in damages for the injury to the mare. *Bennett* v. *Blackmore*, 26 L. J. 228; 90 L. T. 395. Defendants erected a fence of barbed wire between their railway line and plaintiff's farm. Sheep grazing on plaintiff's farm were injured by coming in contact with the wire. *Held*, that the defendants were liable for the damage occasioned to the sheep. *M'Quillan* v. *Crommelin Iron Ore Co.* 26 Ir. L. T. Rep. 15. Lands belonging to plaintiff and defendant, who were adjoining owners, were separated by an old quickset fence. This hedge defendant dug up and replaced by a new one of young quicks, which he protected by a barbed wire fence of a very severe character, set up with plaintiff's acquiescence on plaintiff's land. Plaintiff then turned out a mare to graze on his land, and she was injured. *Held*, that defendant was liable. *Shipton* v. *Lucas*, 92 L. T. 297. Defendant put up a barbed wire fence separating his land from a public footpath, and plaintiff was walking along the footpath when a sudden gust of wind blew his coat against the fence, and it was torn. No negligence or want of skill or care in the erection of the fence was imputed to the defendant, but the county court judge held that the fence as constructed and placed was dangerous to the public using the footpath and a nuisance. This decision was affirmed on appeal to the High Court. *Stewart* v. *Wright*, 57 J. P. 137; affirmed 9 T. L. R. 480.

A valuable collection and review of the American cases on the subject will be found in 95 L. T. 419.

(*q*) This title must not be taken to limit the meaning of the term "highway" as used in the Act. A *cul-de-sac* may be a highway. *Bateman* v. *Bluck*, 18 Q. B. 870; 21 L. J. Q. B. 406; 17 Jur. 386.

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highway," as applied to barbed wire, means barbed wire which may probably be injurious to persons or animals lawfully using such highway:

In England and Wales the expression "local authority" means any county council, any urban sanitary authority, any sanitary authority in London, any highway board, and any other local authorities existing, or that may be hereafter created by Parliament, having control over highways (*r*).

* * * * *

Removal of barbed wire where nuisance to highway.

3.—(1.) Where there is on any land adjoining a highway within the county or district of a local authority a fence made with barbed wire, or in or on which barbed wire has been placed, and such barbed wire is a nuisance to such highway, it shall be lawful for such local authority to serve notice in writing upon the occupier of such land requiring him within a time therein stated (not to be less than one month nor more than six months after the date of the notice) to abate such nuisance.

(2.) If on the expiration of the time stated in the notice the occupier shall have failed to comply therewith, it shall be lawful for the local authority to apply to a court of summary jurisdiction (*s*), and such court, if satisfied that the said barbed wire is a nuisance to such highway, may by summary order (*t*) direct the occupier to abate such nuisance; and on his failure to comply with such order within a reasonable time the local authority may do whatever may be necessary in execution of the order, and recover in a summary manner the expenses incurred in connexion therewith (*u*).

* * * * *

Proceedings where local authority is occupier of the land.

4. Where the local authority are the occupiers of the land, proceedings under this Act may be taken by any ratepayer within the district of the local authority, and a notice to the local anthority to abate the nuisance shall be deemed to be properly served if it is served upon the clerk of the local authority, and any ratepayer taking proceedings may do all acts and things which a local authority is empowered to do.

Expenses of local authority.

5. Any expenses incurred by a local authority in the execution of this Act shall be defrayed in like manner as the expenses of the local authority incurred in respect of any highways (*x*).

(*r*) The remainder of this section only applies to Scotland and Ireland. Highway boards are now in most cases superseded by rural district councils under s. 25 of the Local Government Act, 1894, *post*, p. 621.

(*s*) As defined by s. 13 (11) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

(*t*) Without appeal, except by case stated under s. 33 of the Summary Jurisdiction Act, 1879.

(*u*) The next sub-section relates only to Ireland.

(*x*) In the case of a county council, these expenses will be charged to the general county account. See Local Government Act, 1888, ss. 11 (1), 68, *ante*, pp. 21, 130.

FERTILISERS AND FEEDING STUFFS ACT, 1893.

(56 & 57 Vict. Cap. 56) (*y*).

An Act to amend the Law with respect to the sale of Agricultural Fertilisers and Feeding Stuffs. [22nd September 1893.]

* * * * *

Warranty on sale of fertiliser.

1.—(1.) Every person who sells for use as a fertiliser of the soil any article manufactured in the United Kingdom or imported from abroad shall give to the purchaser an invoice stating the name of the article and whether it is an artificially compounded article or not, and what is at least the percentage of the nitrogen, soluble and insoluble phosphates, and potash, if any, contained in the article, and this invoice shall have effect as a warranty by the seller of the statements contained therein.

(2.) For the purposes of this section an article shall be deemed to be manufactured if it has been subjected to any artificial process.

(3.) This section shall not apply to a sale where the whole amount sold at the same time weighs less than half a hundredweight.

Warranty on sale of feeding stuff.

2.—(1.) Every person who sells for use as food for cattle any article which has been artificially prepared shall give to the purchaser an invoice stating the name of the article and whether it has been prepared from one substance or seed, or from more than one substance or seed, and this invoice shall have effect as a warranty by the seller of the statements contained therein.

(2.) Where any article sold for use as food for cattle is sold under a name or description implying that it is prepared from any particular substance, or from any two or more particular substances, or is the product of any particular seed, or of any two or more particular seeds, and without any indication that it is mixed or compounded with any other substance or seed, there shall be implied a warranty by the seller that it is pure, that is to say, is prepared from that substance or those substances only, or is a product of that seed or those seeds only.

(3.) On the sale of any article for use as food for cattle there shall be implied a warranty by the seller that the article is suitable for feeding purposes.

(4.) Any statement by the seller of the percentages of nutritive and other ingredients contained in any article sold for use as food for cattle, made after the commencement of this Act in an invoice of such article or in any circular or advertisement descriptive of such article, shall have effect as a warranty by the seller.

(*y*) This Act requires every county council to appoint or join with other councils (county or borough) in appointing a district agricultural analyst for the purpose of analysing fertilizers of the soil and feeding stuffs for cattle on the request of a purchaser. The Act creates offences in connection with the adulteration of these articles and enables county councils to institute prosecutions for such offences.

Sect. 3 (1).

Penalties for breach of duty by seller.

3.—(1.) If any person who sells any article for use as a fertiliser of the soil or as food for cattle commits any of the following offences, namely:—

(a.) Fails without reasonable excuse to give, on or before or as soon as possible after the delivery of the article, the invoice required by this Act; or

(b.) Causes or permits any invoice or description of the article sold by him to be false in any material particular to the prejudice of the purchaser; or

(c.) Sells for use as food for cattle any article which contains any ingredient deleterious to cattle, or to which has been added any ingredient worthless for feeding purposes and not disclosed at the time of the sale,

he shall, without prejudice to any civil liability, be liable, on summary conviction, for a first offence to a fine not exceeding twenty pounds and for any subsequent offence to a fine not exceeding fifty pounds.

(2.) In any proceeding for an offence under this section it shall be no defence to allege that the buyer, having bought only for analysis, was not prejudiced by the sale.

(3.) A person alleged to have committed an offence under this section in respect of an article sold by him shall be entitled to the same rights and remedies, civil or criminal, against the person from whom he bought the article as are available to the person who bought the article from him, and any damages recovered by him may, if the circumstances justify it, include the amount of any fine and costs paid by him on conviction under this section, and the costs of and incidental to his defence on such conviction.

Power to appoint analysts.

4.—(1.) The Board of Agriculture shall appoint a chief agricultural analyst (hereafter referred to as the chief analyst), who shall have such remuneration out of moneys provided by Parliament as the Treasury may assign. The chief analyst shall not while holding his office engage in private practice.

(2.) Every county council shall, and the council of any county borough may, appoint or concur with another council or other councils in appointing for the purposes of this Act a district agricultural analyst (hereafter referred to as a district analyst) for its county or borough, or a district comprising the counties or boroughs of the councils so concurring. The remuneration of any such district analyst shall be provided by the council, or in the case of a joint appointment by the respective councils in such proportions as they may agree, and shall be paid, in the case of a county, as general expenses (*z*), and, in the case of a county borough, out of the borough fund or borough rate. The appointment shall be subject to the approval of the Board of Agriculture. Provided that

(*z*) These expenses will be paid out of the county fund. See Local Government Act, 1888, s. 68, *ante*, p. 130.

no person shall while holding the office of district analyst engage in any trade, manufacture, or business connected with the sale or importation of articles used for fertilising the soil or as food for cattle.

Power for purchaser to have fertiliser or feeding stuff analysed.

5.—(1.) Every buyer of any article used for fertilising the soil or as food for cattle shall, on payment to a district analyst of a fee sanctioned by the body who appointed the analyst, be entitled, within ten days after delivery of the article to the buyer or receipt of the invoice by the buyer, whichever is later, to have the article analysed by the analyst, and to receive from him a certificate of the result of his analysis.

(2.) Where a buyer of an article desires to have the article analysed in pursuance of this section, he shall, in accordance with regulations made by the Board of Agriculture (*a*), take three samples of the article, and shall in accordance with the said regulations cause each sample to be marked, sealed, and fastened up, and shall deliver or send by post one sample with the invoice or a copy thereof to the district analyst, and shall give another sample to the seller, and shall retain the third sample for future comparison: Provided that a district analyst, or some person authorised by him in that behalf with the approval of the body who appointed the analyst, shall, on request either by the buyer or by the seller, and on payment of a fee sanctioned by the said body, take the samples on behalf of the buyer.

(3.) The certificate of the district analyst shall be in such form and contain such particulars as the Board of Agriculture direct (*b*), and every district analyst shall report to the Board as they direct the result of any analysis made by him in pursuance of this Act.

(4.) If the seller or the buyer objects to the certificate of the district analyst, one of the samples selected, or another sample selected in like manner, may, at the request of the seller, or, as the case may be, the buyer, be submitted with the invoice or a copy thereof to the chief analyst, and the seller, or, as the case may be, the buyer, shall, on payment of a fee sanctioned by the Treasury, be entitled to have the sample analysed by the chief analyst, and to receive from him a certificate of the result of his analysis.

(5.) At the hearing of any civil or criminal proceeding with respect to any article analysed in pursuance of this section, the production of a certificate of the district analyst, or if a sample has been submitted to the chief analyst, then of the chief analyst, shall be sufficient evidence of the facts therein stated, unless the defendant or person charged requires that the analyst be called as a witness.

(*a*) Regulations under this clause were issued by the Board of Agriculture and bear date December 23rd, 1893. They are published in the Statutory Rules and Orders, 1893, p. 295.

(*b*) The form of this certificate was prescribed by an Order of the Board, December 20th, 1893. See Statutory Rules and Orders, 1893, p. 299.

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(6.) The costs of and incidental to the obtaining of any analysis in pursuance of this section shall be borne by the seller or the buyer in accordance with the results of the analysis, and shall be recoverable as a simple contract debt.

Penalty for tampering.

6. If any person knowingly and fraudulently—

(a) tampers with any parcel of fertiliser or feeding stuff so as to procure that any sample of it taken in pursuance of this Act does not correctly represent the contents of the parcel; or

(b) tampers with any sample taken under this Act;

he shall be liable on summary conviction to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding six months.

Prosecutions and appeals.

7.—(1.) A prosecution for an offence under this Act may be instituted either by the person aggrieved, or by the council of a county or borough, or by any body or association authorised in that behalf by the Board of Agriculture, but in the case of an offence under section three shall not be instituted by the person aggrieved or by any body or association (*b*) except on a certificate by the Board of Agriculture that there is reasonable ground for the prosecution.

(2.) Any person aggrieved by a summary conviction under this Act may appeal to a court of quarter sessions.

Construction and application.

8.—(1.) For the purposes of this Act the expression "cattle" shall mean bulls, cows, oxen, heifers, calves, sheep, goats, swine, and horses; and the expressions "soluble" and "insoluble" shall respectively mean soluble and insoluble in water.

(2.) This Act shall apply to wholesale as well as retail sales.

9. * * **10.** * * * (*c*).

Commencement of Act.

11. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-four.

Short title.

12. This Act may be cited as the Fertilisers and Feeding Stuffs Act, 1893.

(*b*) "Body or association" must be taken to mean a body or association authorized by the Board of Agriculture, and not to include a county (or borough) council; these councils may, it appears, institute a prosecution under s. 3 without a certificate from the Board.

(*c*) Sections 9 and 10 relate only to Scotland and Ireland respectively.

PUBLIC AUTHORITIES PROTECTION ACT, 1893.

(56 & 57 Vict. Cap. 61) (*d*).

An Act to generalize and amend certain statutory provisions for the protection of persons acting in the execution of statutory and other public duties. [5th December 1893.]

* * * * *

Protection of persons acting in execution of statutory or other public duty.

1. Where after the commencement of this Act (*e*) any action, prosecution, or other proceeding (*f*) is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament (*g*), or of

(*d*) This Act repeals various enactments relating to proceedings against public authorities and their officers in respect of the performance of their duties. It abolishes notice of action in every case, but it limits the time within which proceedings may be instituted. It will, of course, apply to proceedings against county councils and their officers.

(*e*) Viz., January 1st, 1894; see s. 4, *infra*.

(*f*) It has been held that this Act, unlike the repealed s. 264 of the Public Health Act, 1875, applies to proceedings taken for an injunction to restrain the committing of a nuisance; *Harrop* v. *Ossett* (*Mayor, etc. of*), 1898, 1 Ch. 525; 14 T. L. R. 308. It appears, therefore, that such decisions as *Att.-Gen.* v. *Hackney Local Board*, L. R. 20 Eq. 626; 44 L. J. Ch. 545; 33 L. T. (N.S.) 244; *Flower* v. *Low Leyton Local Board*, 5 Ch. D. 347; 46 L. J. Ch. 621; 36 L. T. (N.S.) 760; 25 W. R. 545; 41 J. P. 548; *Sellors* v. *Matlock Local Board*, 14 Q. B. D. 928; 52 L. T. (N.S.) 782; *Bateman* v. *Poplar District Board of Works*, 33 Ch. D. 360; 55 L. T. (N.S.) 374; *Chapman* v. *Auckland Union* (*Guardians of*), 23 Q. B. D. 294; 58 L. J. Q. B. 504; 61 L. T. (N.S.) 446; 53 J. P. 820; *Pryce* v. *Hole*, 6 T. L. R. 195; *Whitfield* v. *Newquay Local Board*, *Law Times*, March 18th, 1882, p. 349, will not be in point as to the proceedings to which this Act relates. The repealed s. 264 was also held to be inapplicable to an action for the recovery of land: *Foat* v. *Margate* (*Mayor of*), 11 Q. B. D. 299; 47 J. P. 535; *S.C. Holder* v. *Margate* (*Mayor of*), 52 L. J. Q. B. 711; and to an action brought by a contractor against a local board for a breach of contract: *Davies* v. *Swansea* (*Corporation of*), 8 Ex. 808; 22 L. J. Ex. 297; 17 J. P. 649; but this Act may be of wider application. The section was held to apply to an action for money had and received for the recovery from a local board of sums paid by mistake for paving expenses: *Midland Rail. Co.* v. *Withington Local Board*, 11 Q. B. D. 788; 52 L. J. Q. B. 689; 49 L. T. (N.S.) 489; 47 J. P. 789; and to proceedings against a member of a local board for penalties: *Lea* v. *Facey*, 17 Q. B. D. 139; 55 L. J. M. C. 149; 55 L. T. (N.S.) 300; 51 J. P. 20; affirmed C. A., 19 Q. B. D. 352; 56 L. J. Q. D. 536; 35 W. R. 721; 51 J. P. 756.

(*g*) Questions have often arisen as to whether an act complained of was in fact done, or intended to be done, under an Act of Parliament, and so protected by enactments similar to that of the text. See the cases collected in the notes to this section in Lumley's Public Health. *Per* Kelly, C.B., in *Wilson* v. *Halifax* (*Mayor of*), L. R. 3 Ex. 117; 37 L. J. Ex. 44; 17 L. T. (N.S.) 660; 16 W. R. 707; 32 J. P. 230; "It is now settled by authority that an omission to do something that ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to an act done or intended be done within the meaning of those clauses requiring notice of action for the protection of public bodies acting in the discharge of public duties under Acts of Parliament." And in *Selmes* v. *Judge*, L. R. 6 Q. B. 724; 40 L. J. Q. B. 287; 24 L. T. (N.S.) 904; 19 W. R. 1110; 35 J. P. 645. Blackburn, J., dealing with a question of notice of action under s. 109 of the Highways Act, 1835 (5 & 6 Will. 4, c. 50), said: "It has long been decided that such a provision is intended to protect persons from the consequences of committing illegal acts which are intended to be done

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any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect:

(a.) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof (*h*):

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under the authority of an Act of Parliament, but which by some mistake are not justified in its terms, and cannot be defended by its provisions."

To an action for slander the defendant pleaded that the words were spoken while he was acting as clerk of the markets, in pursuance of the Acts relating to municipal corporations in Ireland, which statutes entitled him to a month's notice of action for any act done in pursuance of them. The plea was held good on demurrer, for the words spoken while acting in pursuance of the statutes were as much within their protection as acts done. *Murray* v. *McSwinney*, Ir. Rep. 9 C. L. 545. See, however, *Royal Aquarium, etc. Society* v. *Parkinson*, L. R. [1892] 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. (N.S.) 513; 40 W. R. 450; 56 J. P. 404, in which a defamatory statement made by a county councillor in the course of proceedings at a meeting for granting music and dancing licences, was held not to be an act done by him in the execution of his duty, so as to make notice of action necessary under 11 & 12 Vict. c. 44, s. 9.

(*h*) In the *Midland Rail. Co.* v. *Withington Local Board*, 11 Q. B. D. 788; 52 L. J. Q. B. 689; 49 L. T. (N.S.) 489; 47 J. P. 789, an action to recover money paid for paving expenses under s. 150 of the Public Health Act, 1875, under the mistaken belief of both parties that the street was not repairable by the inhabitants, it appeared that the money was paid on October 30th, 1880, so that the six months would expire on April 30th, 1881. On April 13th, the plaintiff's secretary wrote to the defendants for information as to the result of certain proceedings which were to determine whether the road was a highway or not, and stating that if the board were defeated they would expect a return of the money. The defendants replied that they were going to appeal, and would inform the plaintiffs of the result. The action was brought in March, 1882, after a month's notice had been given. It was held that the facts did not disclose a waiver by the defendants of the benefit of the similar provision as to a six months period contained in s. 264 of the Public Health Act, 1875.

As to the computation of the six months, see *Freeman* v. *Read*, 4 B. & S. 174; 32 L. 7. M. C. 226; 8 L. T. (N.S.) 458; 11 W. R. 802; 10 Jur. (N.S.) 149; *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. (N.S.) 677; 40 W. R. 63; 56 J. P. 262; 8 T. L. R. 43. Where the cause of action is the doing of the act itself, the limitation of time runs from the act; where it is the resulting damage, it runs from the time when the damage results, and where the injurious act is continuing and causes continuous damage, the right of action also continues. See *Whitehouse* v. *Fellowes*, 10 C. B. (N.S.) 765; 30 L. J. C. P. 305; *Bonomi* v. *Backhouse*, E. B. & E. 622; 28 L. J. Q. B. 378: 34 L. J. Q. B. 181.

Where an excavation made by a local authority under a street for the purpose of laying a sewer was not properly filled in, and in consequence a subsidence of the plaintiff's land with injury to houses thereon took place, which began at a period more than six months before and went on continuously down to the commencement of an action by the plaintiff in respect of such subsidence, it was held, on the authority of *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Cas. 127, that the further subsidence, which took place within the six months before action, constituted a distinct cause of action in respect of which the action was maintainable, notwithstanding the provisions of s. 264 of the Act of 1875. *Crumbie* v. *Wallsend Local Board*, L. R. [1891] 1 Q. B. 503; 60 L. J. Q. B. 392; 64 L. T. (N.S.) 490; 55 J. P. 421; 7 T. L. R.

(b.) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client:

(c.) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded (*i*). If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action:

(d.) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

Repeal.

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies—

(a) the proceeding is to be commenced in any particular place; or

(b) the proceeding is to be commenced within any particular time; or

(c) notice of action is to be given; or

(d) the defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event; or

(e) the defendant may plead the general issue;

and in particular there shall be so repealed the enactments specified in the schedule to this Act to the extent in that schedule mentioned.

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229. And see, to the same effect, *Fairbrother* v. *Bury Rural Sanitary Authority*, 37 W. R. 544.

In an action for compensation awarded in respect of damage occasioned by the exercise of powers under the Metropolis Management Acts, it was held to be no defence that the action was commenced more than six months after the damage was sustained, as s. 106 of the Metropolis Management Act, 1862 (which is similar to the text) did not apply to such a claim, and still less to an action on an award made upon such claim. *Delaney* v. *Metropolitan Board of Works*, L. R. 2 C. P. 532; affirmed 3 C. P. 111; 37 L. J. C. P. 59; 17 L. T. (N.S.) 262; 16 W. R. 137; 31 J. P. 788.

(*i*) This seems to imply that the Act applies to proceedings other than actions for damages. It is probable, therefore, that it has a wider application than s. 264 of the Public Health Act, 1875; and see *Harrop* v. *Ossett* (*Mayor, etc. of*), *ante*, p. 581.

Sect. 2. This repeal shall not affect any proceeding pending at the commencement of this Act (*k*).

3. * * * * * (*l*).

Commencement. **4.** This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

Short title. **5.** This Act may be cited as the Public Authorities Protection Act, 1893.

SCHEDULE (*k*).

SHOP HOURS ACT, 1893.

(56 & 57 VICT. CAP. 67) (*n*).

An Act to amend the Shop Hours Act, 1892.

[21st December 1893.]

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Short titles. **1.** This Act may be cited as the Shop Hours Act, 1893, and this Act and the Shop Hours Act, 1892, may be cited together as the Shop Hours Acts, 1892 and 1893.

Salaries and expenses. **2.**—(1.) Any salaries payable or other expenses incurred by the council of a county or a borough for the purposes of the Shop Hours Act, 1892, shall be defrayed by the council of a county out of the county fund, and by the council of a borough out of the borough fund or borough rate.

* * * * * (*o*).

3. * * * * * (*o*).

ISOLATION HOSPITALS ACT, 1893.

(56 & 57 VICT. CAP. 68) (*p*).

An Act for enabling County Councils to promote the establishment of Hospitals for the reception of Patients suffering from Infectious Diseases. [21st December 1893.]

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Short title. **1.** This Act may be cited for all purposes as the Isolation Hospitals Act, 1893.

(*k*) The schedule contains a long list of repealed enactments which are not material to the subject of the present work.

(*l*) Section 3 contains a saving as to Scotland only.

(*n*) This Act amends the Shop Hours Act, 1892 (*ante*, p. 570), by providing for the payment of salaries and expenses under that Act, in the case of a county, out of the county fund. The original Act is further amended by 58 Vict. c. 5, *post*.

(*o*) Sub-section (2) of this section applies to Ireland only. Section 3 applies to Scotland only.

(*p*) By s. 131 of the Public Health Act, 1875, both urban and rural district councils have power to provide hospitals for the use of the inhabitants of their districts. This Act enables a county council, upon the application of

Limits of Act.

2. This Act shall not extend to Scotland or Ireland, or to the administrative county of London, or to any county borough, or without the consent of the council of the borough to any borough containing, according to the census for the time being in force, a population of ten thousand persons or upwards, or to any borough containing a less population without the like consent, unless the Local Government Board by order direct that the Act shall apply to such borough.

County council to provide for establishment of isolation hospitals on application, &c.

3. The council of every county may, on such application being made to them, and proof adduced, as is in this Act mentioned, provide or cause to be provided in any district within their county a hospital for the reception of patients suffering from infectious diseases (in this Act referred to as "an isolation hospital") (*q*).

Application by whom to be made.

4.—(1.) An application to a county council for the establishment of an isolation hospital may be made by any one or more of the authorities, by this Act defined as local authorities (*r*), having jurisdiction in the county, or any part of the county; and any such application may be made in pursuance of a resolution passed at a meeting of such authority by a majority of the members assembled thereat, and voting in manner in which votes are required by law to be given at a meeting of the authority. Any such meeting shall be called together by notice given in manner in which notices of the meetings of the authority concerned are required to be given by law, and specifying the object of the meeting to be the making an application to the county council under this Act.

(2.) An application for the establishment of an isolation hospital may also be made by any number of ratepayers not less than twenty-five, in any contributory place as defined by this Act (*s*).

Application, how made.

5.—(1.) The application shall be made by petition, and shall state the district for which the isolation hospital is required, and the reasons which the petitioners adduce for its establishment.

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a local authority (as defined by s. 26), to provide an isolation hospital for any district within their county for persons suffering from infectious diseases. The district for which such a hospital may be provided under this Act is to be fixed by the county council subject to the right of objection under ss. 8 and 20 by the local authority having jurisdiction in the proposed district to the formation or subsequent variation of that district.

(*q*) It will be observed that hospitals to be provided under this Act are for infectious cases only. Infectious diseases within the meaning of the Act are defined by s. 26, *post*.

This section does not, of course, empower a county council to create a nuisance by the establishment of an isolation hospital. See the cases collected under s. 131 of the Public Health Act, 1875, in Lumley's Public Health.

It may be observed that though the text purports to enable a county council to provide a hospital, the Act does not contain provisions for their doing so except through a hospital committee.

(*r*) These are urban and rural district councils and parish councils. See s. 26, *post*. They do not, however, include boroughs, save to the extent mentioned in s. 2, *ante*.

(*s*) For definition of a contributory place, see s. 26, *post*.

Sect. 5 (2).

(2.) The county council shall, by themselves, or by a committee of their body appointed for that purpose, consider the petition, and, if satisfied by the statements of the petition as originally prepared, or by any amendments made therein, that a primâ facie case is made out for a local inquiry, they shall cause such inquiry to be made as to the necessity for the establishment of an isolation hospital.

Effect of report of medical officer of county.

6. The county council may direct an inquiry to be made by the medical officer of health of the county as to the necessity of an isolation hospital being established for the use of the inhabitants of any particular district in the county, and in the event of such medical officer reporting that such an hospital ought to be established for the use of the inhabitants of a district, may take the same proceedings in all respects for the establishment of such hospital as if a petition had been presented by a local authority for the establishment of an isolation hospital for the district named in the report of such medical officer of health (*t*).

Conduct of local inquiry.

7. The county council shall conduct the local inquiry into the necessity for the establishment of an isolation hospital, and as to the proper site for the hospital, and the district for which it is to be established (in this Act called the "hospital district"), by a committee consisting of such number of their members, either with or without the addition of such other persons, or in such other manner as the council think expedient. All expenses properly incurred by any such committee shall be paid as herein-after directed. The local inquiry shall be held subject to such regulations and otherwise as the council thinks fit. Due notice of the time and place at which any inquiry is to be held by the county council shall be given in such manner as the county council may think the best adapted to inform any persons interested (*u*), and such persons may attend and state their case before the members appointed to conduct such inquiry.

Variation of district and appeal.

8.—(1.) Every hospital district constituted under this Act shall consist of a single local area, or two or more local areas, as defined by this Act (*x*).

(2.) The county council may vary any proposed hospital district by adding to it or subtracting from it any local area (*y*). A local area which is already provided with such isolation hospital accommodation as may in the opinion of the county council be sufficient for the reasonable exigencies of such area, shall not, without the assent of

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(*t*) This section provides an alternative method for putting the county council in motion. The inquiry by the county medical officer of health does not, however, dispense with the local inquiry directed to be held under th preceding section.

(*u*) These would apparently include the local authorities for the proposed district and the owners of the land proposed to be taken for the site of the hospital, and, probably, also the adjoining owners.

(*x*) For definition of local area, see s. 26, *post*.

(*y*) Compare s. 20, *post*, as to the alteration of an order for the constitution of a hospital district.

the local authority of such area testified by a resolution of such authority, be included in a hospital district under this Act. Sect. 8 (2).

(3.) If any local authority having jurisdiction within any part of the proposed hospital district, object to the formation of such a district, or to the addition or subtraction thereto or therefrom of any local area within their jurisdiction, such authority may at any time within three months from the date of the order appeal to the Local Government Board (*z*), and the decision of such Board shall be conclusive.

Order as to dismissal of petition or constitution of district.

9. On conclusion of a local inquiry by the county council as to the necessity for the establishment of an isolation hospital, the county council shall make an order (*a*), either dismissing the petition, or constituting a hospital district (*b*), and directing an isolation hospital for such district to be established: Provided that the county council shall not take steps for the constitution of a hospital district for one or more contributory places forming a portion of a rural sanitary district within the jurisdiction of the county council, or for one local area, unless the sanitary (*c*) authority of such place or places, or area, assent to the application, or are proved to the satisfaction of the county council to be unable or unwilling to make suitable hospital accommodation for such place, places, or area.

Hospital committee.

10.—(1.) When a hospital district has been constituted, a committee shall be formed by the county council. Any such committee may consist wholly of members of the county council, or partly of members of the county council and partly of representatives of the local area or areas in the district, or wholly of such local representatives. The county council shall make regulations for the election, rotation, and qualification, and for all other matters relating to the constitution of any such committee, subject to these qualifications, that where no contribution is made by the county council to the funds of the hospital (*d*), such committee shall consist, unless the constituent local authorities otherwise desire, wholly of representatives of the local area or local areas of the district, and that if any local authority within the hospital district feels aggrieved by the mode in which any such committee is constituted, it may appeal to the Local Government Board (*e*), and that Board may modify the constitution of any committee so formed by the county council in such manner as the Board think expedient and just.

(2.) A hospital committee shall have all such powers of acquiring land as are herein-after mentioned (*f*), also all such other powers of

(*z*) As to appeals to the Local Government Board, see s. 24, *post*.
(*a*) For power to vary the order subsequently, see s. 20.
(*b*) Power to vary the district is given by s. 8, *supra*. As to payment of expenses where the hospital district consists of more than one local area, see s. 18, *post*.
(*c*) *Sic*, *quære*, "local authority."
(*d*) Power to make such contribution is given by s. 21, *post*.
(*e*) As to appeals to the Local Government Board, see s. 24, *post*.
(*f*) See s. 11, *post*.

Sect. 10 (2). providing a hospital by purchase or otherwise, and managing and maintaining the same when so provided, as the county council may delegate to them: Provided that the county council shall retain to themselves the power of inspecting any such hospital, and of raising money by loan for the purposes of such hospital (*g*).

(3.) A hospital committee shall be a body corporate, having a perpetual succession and a common seal, under such name and style as may be conferred on it by the county council. It shall be capable of acquiring land, by devise, gift, purchase or otherwise, without licence in mortmain.

(4.) Where a hospital district is an area wholly or as to the greater part thereof under the jurisdiction of any corporate local authority (*h*), the county council may, if they think fit, invest such local authority with all the powers of a hospital committee under this Act, and thereupon such authority shall be deemed to be the hospital committee for such district, and shall exercise all the powers of such committee under its original corporate name.

Purchase of land for hospital.

11. Subject to any directions given by the county council, a hospital committee may purchase or lease any land, whether within or without the hospital district, for the purpose of erecting thereon an isolation hospital, and may exercise all the powers conferred on a sanitary authority by the provisions of the Public Health Act, 1875, and the Acts amending the same, relating to the purchase of lands. For the purposes of this section the provisions contained in sections one hundred and seventy-five to one hundred and seventy-eight (inclusive), and sections two hundred and ninety-six to two hundred and ninety-eight (inclusive), of the Public Health Act, 1875, shall, so far as consistent herewith, be incorporated with this Act (*i*).

38 & 39 Vict. c. 55.

Management of hospital, and regulations.

12. A hospital committee may from time to time, make all necessary rules and regulations for the conduct and management of their hospital and the patients therein.

Ambulances to be provided.

13. Every isolation hospital shall be provided with an ambulance or ambulances for the purpose of conveying patients to the hospital, and shall, so far as practicable, be in connexion with the system of telegraphs.

Additional hospital accommodation.

14. A hospital committee may, in expectation of or in the event of an outbreak of any infectious disease (*k*), provide any accommodation

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(*g*) Power to raise money by loan is given by s. 22, *post*.

(*h*) This will include urban and rural district councils and parish councils.

(*i*) Sections 175—178 of the Public Health Act, 1875 (see *ante*, p. 126), relate to the purchase of lands by sanitary authorities, and to the sale and letting thereof, and include power to apply to the Local Government Board to make provisional orders putting in force the compulsory clauses of the Lands Clauses Acts, and provisions as to the sale of lands of the Duchy of Lancaster. Sections 296—298 relate to inquiries and provisional orders of the Local Government Board. These sections are set out, *ante*, p. 164.

(*k*) For definition of infectious disease, see s. 26, *post*.

in addition to their existing accommodation, by hiring or otherwise acquiring, any buildings, tents, wooden houses, or other places for the reception of patients. A hospital committee may, in addition to, or instead of, providing a central hospital, establish within their district hospitals in cottages or small buildings, or otherwise as they may think expedient. A hospital committee may also, before they have established a permanent hospital or hospitals, provide for their district such temporary accommodation as is in this section mentioned.

Training of nurses.

15. Subject to any regulations made by the county council, a hospital committee may make arrangements for the training of nurses for attendance on patients suffering from any infectious disease, either inside or outside the hospital, and may charge for the attendance of such nurses outside the hospital; and the expenses of any such nurses, after deducting any profits derived from their services, shall be establishment expenses of the hospital, within the meaning of this Act (*l*).

Charges for patients.

16.—(1.) There shall be charged with respect to every person admitted into the hospital such sum as the hospital committee may think sufficient to defray the expenses in this Act defined as patients' expenses (*m*) incurred in respect of such person; and there shall be added thereto, in the case of persons brought from beyond the hospital district, such sum as the committee may think fit, as a contribution to the structural and establishment expenses (*m*).

(2.) Persons desirous of being provided with accommodation of an exceptional character may be so provided on their undertaking, to the satisfaction of the committee, to pay for the same a sum fixed by the committee, and also to pay for all other expenses incurred in respect of their maintenance in the hospital, and all expenses so incurred in respect of such a patient are in this Act referred to as "special patients' expenses."

Classification of expenses.

17.—(1.) The expenses to be incurred in respect of any isolation hospital under this Act shall be classified as structural expenses, establishment expenses, and patients' expenses.

"Structural expenses" shall include the original cost of providing the hospital, including the purchase (if any) of the site, and the furnishing such hospital with the necessary appliances and furniture required for the purpose of receiving patients; also any permanent extension or enlargement of the hospital, or any alteration or repair of the drainage, and any structural repairs; but shall not include ordinary repairs, painting, cleaning, or the renewal or keeping in order of the appliances and furniture, or the supply of new appliances or furniture.

"Establishment expenses" means the cost of keeping the hospital, its appliances and furniture, in a state requisite for the comfort of

(*l*) See as to the different classes of expenses, s. 17, *post*.
(*m*) See s. 17, *post*.

Sect. 17 (1).

the patients, also the salaries of the doctors, nurses, servants, and all other expenses for maintaining the hospital in a fit state for the reception of patients.

"Patients' expenses" means the cost of conveying, removing, feeding, providing medicines, disinfecting, and all other things required for patients individually, exclusive of structural and establishment expenses (*n*).

(2.) All expenses incurred by a county council in and about the formation of a hospital district, including the costs of any inquiries, and the expenses of obtaining land and other preliminary expenses, shall be deemed to be structural expenses.

(3.) In the case of any doubt arising as to what are structural expenses, establishment expenses, or patients' expenses within the meaning of this Act, the decision of the hospital committee shall be conclusive.

Payment of expenses.

18. All expenses incurred by a county council or by a hospital committee under this Act, with the exception of patients' expenses, and special patients' expenses, shall, when a hospital district consists of a single local area, be defrayed out of the local rate of that area (*o*). Where the hospital district consists of more than one local area, all the expenses, save as aforesaid, incurred by the hospital committee shall be paid out of a common fund to which all receipts shall be carried, and to which the local authorities (*p*) in the hospital district shall contribute in such proportions as the county council by their order constituting the district (*q*) may determine.

38 & 39 Vict. c. 55.

Section two hundred and eighty-four of the Public Health Act, 1875 (*r*), shall apply to the sums to be contributed by the local authorities under this section as if the same were sums to be contributed by component districts and the hospital committee were a joint board under that Act.

Recovery of patients' expenses.

19.—(1.) Patients' expenses (*s*), in respect of any person who at the time of his reception into the hospital, or at any time within fourteen days previously, is or has been in receipt of poor law relief, shall be a debt due to the hospital committee from the guardians of the union from which he is sent, and shall be recoverable from them in a summary manner (*t*) or otherwise (*u*).

(*n*) As to expenses of burial, see s. 19 (4), *post*.

(*o*) For definitions of local area and local rate, see s. 26, *post*. As to contributions out of the county rate, see s. 21, *post*.

(*p*) Defined in s. 26, *post*.

(*q*) See s. 9, *ante*.

(*r*) The section referred to provides for the issue by the joint board of precepts to the local authorities for the amount of their contributions, and contains provisions for enforcing payment.

(*s*) Defined in s. 17, *supra*.

(*t*) By the civil debt procedure under 42 & 43 Vict. c. 49, ss. 6 and 35.

(*u*) *E.g.*, in the county court. This section removes a difficulty as to the recovery of the expenses of paupers which is not provided for in cases under s. 132 of the Public Health Act, 1875.

(2.) Patients' expenses, in respect of a non-pauper patient, shall be a debt due to the hospital committee, and recoverable in a summary manner from the local authority of the local area from which the patient is sent, and shall be paid out of the local rate (*x*).

(3.) Where a patient has been brought from a place beyond the hospital district, any additional charges made by the hospital committee in respect of such patient shall be recoverable as if they were part of the patients' expenses.

(4.) Special patients' expenses (*y*) shall be a debt recoverable in a summary manner from the patient, or from the estate of the patient, in respect of whom the expenses have been incurred.

(5.) The expenses of the burial of any patient dying in the hospital shall be payable in the same manner in which the expenses of his maintenance are payable.

Power of county council to alter order.

20. A county council may, on the application of a hospital committee, and with the assent of any local authority concerned in such alteration, alter any order made by them for the establishment of a hospital (*z*).

Power of county councils to contribute to hospitals.

21. A county council may, where they deem it expedient so to do for the benefit of the county, contribute out of the county rate a capital or annual sum towards the structural and the establishment expenses of an isolation hospital, or to either class of such expenses (*a*).

Power to borrow money.

22. A county council may borrow on the security of the county rate, and in manner provided by the Local Government Act, 1888 (*b*), any money required for the purpose of carrying into effect the provisions of this Act; and any loans so borrowed, and any other money expended by them for the purposes of this Act, together with interest thereon at the rate of four pounds per centum per annum, shall be repaid to the county council out of the local rate, as in this Act directed; and, in the case of a loan, shall be repaid within a period not exceeding that within which the loan is repayable by the county council.

Treatment in hospital not to disqualify.

23. A person shall not by reason of his being admitted into and maintained in an hospital established in pursuance of this Act suffer any disqualification or any loss of franchise or other right or privilege (*c*).

Inquiries by Local Government Board.

24. Sub-sections one and five of section eighty-seven of the Local Government Act, 1888 (*d*), shall apply in every case where the

(*x*) For definitions of local area, local authority, and local rate, see s. 26, *post*. The civil debt procedure will be applicable.

(*y*) See s. 16 (2), *ante*.

(*z*) Power to vary the district is given by s. 8 (2), *ante*, p. 586.

(*a*) As to what are structural and establishment expenses, see s. 17, *ante*. By s. 18 these fall primarily on the local rate.

(*b*) See s. 69 of that Act, *ante*, p. 132.

(*c*) An extension of the Medical Relief Disqualification Removal Act, 1885, 48 & 49 Vict. c. 46.

(*d*) See *ante*, p. 163.

Sect. 25. Local Government Board are authorised to determine any question on appeal to them.

Audit of accounts.

25. The provisions of sections two hundred and forty-five, two hundred and forty-seven, two hundred and forty-nine, and two hundred and fifty of the Public Health Act, 1875, as amended by the District Auditors Act, 1879, shall apply to the accounts of any hospital committee, and of any officers or assistants of such committee, and to the audit of such accounts, as if such committee were an urban authority other than the council of a borough (*e*).

Definitions.

26. A "local area" means in this Act any one of the following localities, that is to say, an urban sanitary district, a rural sanitary district, or any contributory place, or where a local area is included in more than one county, the part of the area included in each county (*f*).

A "contributory place" has the same meaning in this Act as in section two hundred and twenty-nine of the Public Health Act, 1875 (*g*).

38 & 39 Vict. c. 55.

A "local authority" means in this Act, as respects an urban sanitary district, the urban sanitary authority; as respects a rural sanitary district, the rural sanitary authority, and in the case of any contributory place being a parish, the vestry or other authority in which the powers of the vestry may be vested by any Act of Parliament (*h*), and in the case of any other contributory place situated within the district of a rural sanitary authority, such rural sanitary authority.

The "local rate" means, as respects an urban or rural sanitary district or contributory place, the rate out of which expenses incurred in the execution of the Acts relating to public health are directed to be paid, and in the case of any contributory place the expenses incurred in the execution of this Act shall be deemed to be special expenses (*i*).

The expression "infectious diseases" in this Act has the same meaning as in the Infectious Diseases (Notification) Act, 1889 (*k*), and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act, and may be applied to any other infectious disease, by order of the county council, or any committee to whom they have delegated their powers under this section, in like manner as if such council or committee were a local authority acting under that Act (*l*).

52 & 53 Vict. c. 72.

(*e*) See the sections referred to, and notes in Lumley's Public Health.

(*f*) Since the Local Government Act, 1894, came into operation, local areas have for the most part been adjusted so that the whole of each area is within the same county.

(*g*) "Contributory place" is defined by the section referred to; the expression includes a rural parish and a special drainage district within a rural district.

(*h*) The powers of the vestry were vested in the parish council by the Local Government Act, 1894, s. 6, *post*.

(*i*) See ss. 207 and 229 of the Public Health Act, 1875.

(*k*) See the enumeration of infectious diseases in s. 6 of that Act.

(*l*) See s. 7 of that Act.

LOCAL GOVERNMENT ACT, 1894.

(56 & 57 VICT. CAP. 73 (*m*).)

An Act to make further provision for Local Government in England and Wales. [5th March 1894.]

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PART I.

PARISH MEETINGS AND PARISH COUNCILS.

Constitution of Parish Meetings and Parish Councils.

Constitution of parish meetings and establishment of parish councils.

1.—(1.) There shall be a parish meeting for every rural parish, and there shall be a parish council for every rural parish which has a population of three hundred or upwards; Provided that an order of the county council in pursuance of Part III. of this Act—

(a) shall, if the parish meeting of a rural parish having a population of one hundred or upwards so resolve, provide for establishing a parish council in the parish, and may, with the consent of the parish meeting of any rural parish having a population of less than one hundred, provide for establishing a parish council in the parish; and

(b) may provide for grouping a parish with some neighbouring parish or parishes under a common parish council, but with a separate parish meeting for every parish so grouped, so, however, that no parish shall be grouped without the consent of the parish meeting for that parish (*n*).

(2.) For the purposes of this Act every parish in a rural sanitary district shall be a rural parish.

(3.) Where a parish is at the passing of this Act situate partly within and partly without a rural sanitary district, the part of the parish which is within the district, and the part which is without, shall, as from the appointed day, but subject to any alteration of area made by or in pursuance of this or any other

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(*m*) This Act imposes numerous duties upon county councils. Amongst the more important are those relating to the alteration of areas and boundaries under Part III., the making of orders for the compulsory acquisition of land by parish councils (ss. 9, 10), the hearing of and acting upon complaints of defaults by district councils in the performance of their duties (ss. 16, 26), the establishment and dissolution of parish councils, and the grouping of parishes under a common parish council (s. 1 and Part III.) The Act has been fully annotated by the present editors in a separate work. The importance of the Act to county councils is so great that it has been thought impossible to omit it from the present work; but it is proposed only to call attention to some of the points which more particularly affect county councils, and to refer the reader for fuller information to the separate work already alluded to.

(*n*) Further provisions as to orders for establishing parish councils and grouping parishes are contained in ss. 38—40, *post*.

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Act (*n*), be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same (*o*).

39 & 40 Vict. c. 61.

Parish meetings.

2.—(1.) The parish meeting for a rural parish shall consist of the following persons, in this Act referred to as parochial electors, and no others, namely, the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish.

(2.) Each parochial elector may, at any parish meeting, or at any poll consequent thereon, give one vote and no more on any question, or, in the case of an election, for each of any number of persons not exceeding the number to be elected.

(3.) The parish meeting shall assemble at least once in every year, and the proceedings of every parish meeting shall begin not earlier than six o'clock in the evening.

(4.) Subject to the provisions of this Act as to any particular person being the chairman of a parish meeting, the meeting may choose their own chairman.

(5.) A poll consequent on a parish meeting shall be taken by ballot.

(6.) The reasonable expenses of and incidental to the holding of a parish meeting or the taking of a poll consequent thereon shall be defrayed as hereinafter provided.

(7.) With respect to parish meetings the provisions in the First Schedule to this Act shall have effect.

Constitution of parish council.

3. (*p*)—(1.) The parish council for a rural parish shall be elected from among the parochial electors of that parish or persons who have during the whole of the twelve months preceding the election resided in the parish, or within three miles thereof, and shall consist of a chairman and councillors, and the number of councillors shall be such as may be fixed from time to time by the county council, not being less than five nor more than fifteen.

(2.) No person shall be disqualified by sex or marriage for being elected or being a member of a parish council.

(*n*) The area of the parish might have been altered before this section took effect, by an order of the county council under s. 36, *post*, or s. 57 of the Local Government Act, 1888, *ante*, p. 111. See also the similar provision as to parishes situate in more than one urban district, s. 36 (2), *post*.

(*o*) The effect of a division of a parish under this section is to abolish all poor law settlements previously acquired in the old parish: *Dorking Union (Guardians of)* v. *St. Saviour's Union (Guardians of)*, 14 T. L. R. 213.

(*p*) The duties of a county council under this section (of fixing the number of parish councillors and naming a parish where necessary) were for the most part performed before the Act came into operation. But the number of councillors may be altered from time to time, and the provisions of this section must be borne in mind in framing an order for the establishment of a new parish council.

Sect. 3 (3).

(3.) The term of office of a parish councillor shall be one year.

(4.) On the fifteenth day of April in each year (in this Act referred to as the ordinary day of coming into office of councillors) the parish councillors shall go out of office, and their places shall be filled by the newly elected councillors.

(5.) The parish councillors shall be elected by the parochial electors of the parish.

(6.) The election of parish councillors shall, subject to the provisions of this Act, be conducted according to rules framed under this Act for that purpose by the Local Government Board.

(7.) The parish council shall in every year, on or within seven days after the ordinary day of coming into office of councillors, hold an annual meeting.

(8.) At the annual meeting, the parish council shall elect, from their own body or from other persons qualified to be councillors of the parish, a chairman, who shall, unless he resigns, or ceases to be qualified, or becomes disqualified, continue in office until his successor is elected.

(9.) Every parish council shall be a body corporate by the name of the parish council, with the addition of the name of the parish, or if there is any doubt as to the latter name, of such name as the county council after consultation with the parish meeting of the parish direct, and shall have perpetual succession, and may hold land for the purposes of their powers and duties without licence in mortmain ; and any act of the council may be signified by an instrument executed at a meeting of the council, and under the hands, or, if an instrument under seal is required, under the hands and seals, of the chairman presiding at the meeting and two other members of the council.

(10.) With respect to meetings of parish councils the provisions in the First Schedule to this Act shall have effect.

Use of schoolroom.

4.—(1.) (*q*). In any rural parish in which there is no suitable public room vested in the parish council or in the chairman of a parish meeting and the overseers which can be used free of charge for the purposes in this section mentioned, the parochial electors and the parish council shall be entitled to use, free of charge, at all reasonable times, and after reasonable notice, for the purpose of—

(a) the parish meeting or any meeting of the parish council ; or

(*q*) Under clause (b) of this sub-section the rooms referred to may be used for local inquiries by the county council. It will be noticed, however, that the right to use the rooms is given to "the parochial electors and the parish council," and it is conceived that a resolution of the parish meeting or council will be necessary before the use of the rooms can be claimed. See the circular of the Education Department of November 30th, 1894, set out in the appendix to the editors' work on this Act.

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(b) any inquiry for parochial purposes by the Local Government Board or any other Government department or local authority ; or

(c) holding meetings convened by the chairman of the parish meeting or by the parish council, or if as to allotments in the manner prescribed by the Allotments Act, 1890, or otherwise as the Local Government Board may by rule prescribe, to discuss any question relating to allotments, under the Allotments Acts, 1887 and 1890, or under this Act ; or

53 & 54 Vict. c. 65.

(d) the candidature of any person for the district council or the parish council ; or

(e) any committee or officer appointed, either by the parish meeting or council or by a county or district council, to administer public funds within or for the purposes of the parish

any suitable room in the schoolhouse of any public elementary school receiving a grant out of moneys provided by Parliament, and any suitable room the expense of maintaining which is payable out of any local rate :

Provided that this enactment shall not authorise the use of any room used as part of a private dwelling-house, nor authorise any interference with the schoolhours of an elementary day or evening school, nor, in the case of a room used for the administration of justice or police, with the hours during which it is used for these purposes.

(2.) If, by reason of the use of the room for any of the said purposes, any expense is incurred by the persons having control over the room, or any damage is done to the room or to the building of which the room is part or its appurtenances, or the furniture of the room or the apparatus for instruction, the expense or damage shall be defrayed as part of the expenses of the parish meeting or parish council or inquiry as the case may be ; but when the meeting is called for the purpose of the candidature of any person, such expense or damage shall be reimbursed to the parish meeting or the parish council by the persons by whom or on whose behalf the meeting is convened.

(3.) If any question arises under this section as to what is reasonable or suitable, it may be determined, in the case of a schoolhouse, by the Education Department, in the case of a room used for the administration of justice or police, by a Secretary of State, and in any other case by the Local Government Board.

Powers and Duties of Parish Councils and Parish Meetings.

Parish council to appoint overseers.

5.—(1.) The power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment

of an assistant overseer, for every rural parish having a parish council, shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the parish, and shall in either case forthwith give written notice thereof in the prescribed form to the board of guardians. Sect. 5 (1).

(2.) As from the appointed day—

(a) the churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens, and

(b) references in any Act to the churchwardens and overseers shall, as respects any rural parish, except so far as those references relate to the affairs of the church, be construed as references to the overseers, and

(c) the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.

Transfer of certain powers of vestry and other authorities to parish council.

6.—(1.) Upon the parish council of a rural parish coming into office, there shall be transferred to that council :—

(a.) The powers, duties, and liabilities of the vestry of the parish (*r*) except—

(i.) so far as relates to the affairs of the church or to ecclesiastical charities ; and

(ii.) any power, duty, or liability transferred by this Act from the vestry to any other authority :

(b.) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855 : Provided that such obligations shall not in the case of any particular parish 18 & 19 Vict. c. 128.

(*r*) It does not follow from this provision that a parish council is liable to indictment for non-repair of a highway. *R.* v. *Shipley*, 13 T. L. R. 486 ; 61 J. P. 488 ; 18 Cox C. C. 531.

Sect. 6 (1).

be deemed to attach, unless or until the churchwardens subsequently to the passing of this Act shall give a certificate, as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate.

(c.) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to

(i.) appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate (*rr*) ; and

(ii.) the provision of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape, or matters relating thereto ; and

(iii.) the holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them ;

(d.) The powers exercisable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property.

(2.) A parish council shall have the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders by the Housing of the Working Classes Act, 1890, but without prejudice to the powers of such householders (*s*).

53 & 54 Vict. c. 70.

(3.) A parish council shall have the same power of making a representation with respect to allotments, and of applying for the election of allotment managers, as is conferred on parliamentary electors by the Allotments Act, 1887, or the Allotments Act, 1890, but without prejudice to the powers of those electors (*t*).

50 & 51 Vict. c. 48.
53 & 54 Vict. c. 65.

(4.) Where any Act constitutes any persons wardens for allotments, or authorises or requires the appointment or election of any wardens committee or managers for the purpose of allotments, then, after a parish council for the parish interested in such allotments comes into office, the powers and duties of the wardens, committee,

(*rr*) As to the county rate, see note to s. 3 (i.) of the Local Government Act, 1888, *ante*, p. 5.

(*s*) A complaint or representation under this sub-section is made in the first instance to the district council or their medical officer. But under s. 45 of the Housing of the Working Classes Act, 1890, the matter of the complaint must be brought to the attention of the county council, who may exercise the powers of the district council in the event of that body failing to take proceedings in a proper case. See this section, *ante*, p. 522.

(*t*) See the Allotments Act, 1890, and notes, *ante*, p. 517.

or managers shall be exercised and performed by the parish council, and it shall not be necessary to make the said appointment or to hold the said election, and for the purpose of section sixteen of the Small Holdings Act, 1892, two members of the parish council shall be substituted for allotment managers or persons appointed as allotment managers (*u*).

55 & 56 Vict. c. 31.

Transfer of powers under adoptive Acts.

7.—(1.) As from the appointed day, in every rural parish the parish meeting shall, exclusively, have the power of adopting any of the following Acts, inclusive of any Acts amending the same (all which Acts are in this Act referred to as "the adoptive Acts"); namely,—

(a.) The Lighting and Watching Act, 1833; 3 & 4 Will. 4, c. 90.

(b.) The Baths and Washhouses Acts, 1846 to 1882; 9 & 10 Vict. c. 74. 45 & 46 Vict. c. 30.

(c.) The Burial Acts, 1852 to 1885; 15 & 16 Vict. c. 85. 48 & 49 Vict. c. 21.

(d.) The Public Improvements Act, 1860; 23 & 24 Vict. c. 30.

(e.) The Public Libraries Act, 1892. 55 & 56 Vict. c. 53.

(2.) Where under any of the said Acts a particular majority is required for the adoption or abandonment of the Act, or for any matter under such Act, the like majority of the parish meeting or, if a poll is taken, of the parochial electors, shall be required, and where under any of the said Acts the opinion of the voters is to be ascertained by voting papers, the opinion of the parochial electors shall be ascertained by a poll taken in manner provided by this Act.

(3.) Where under any of the said Acts the consent or approval of, or other act on the part of, the vestry of a rural parish is required in relation to any expense or rate, the parish meeting shall be substituted for the vestry, and for this purpose the expression "vestry" shall include any meeting of ratepayers or voters.

(4.) Where there is power to adopt any of the adoptive Acts for a part only of a rural parish, the Act may be adopted by a parish meeting held for that part (*x*).

(5.) Where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council.

(6.) This Act shall not alter the incidence of charge of any rate levied to defray expenses incurred under any of the adoptive Acts,

(*u*) See s. 16 of the Small Holdings Act, 1892, *ante*, p. 555.

(*x*) The "part" of a parish to adopt the adoptive Act must, of course, be such a part as is entitled under the Act in question to adopt it. See, for instance, s. 73 of the Lighting and Watching Act, 1833; ss. 12 and 13 of the Burial Act, 1855; and s. 5 of the Burial Act, 1857. The provision in the text does not give any increased powers of adopting for a part.

Sect. 7 (6). and any such rate shall be made and charged as heretofore, and any property applicable to the payment of such expenses shall continue to be so applicable (*y*).

(7.) When any of the adoptive Acts is adopted for the whole or part of a rural parish after the appointed day, and the parish has a parish council, the parish council shall be the authority for the execution of the Act.

(8.) For the purposes of this Act the passing of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, shall be deemed an adoption of those Acts.

Additional powers of parish council.

8.—(1.) (*z*) A parish council shall have the following additional powers, namely, power—

(a) to provide or acquire buildings for public offices and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting ; and

(b) to provide or acquire land for such buildings and for a recreation ground and for public walks ; and

(c) to apply to the board of Agriculture under section nine of the Commons Act, 1876 ; and

39 & 40 Vict. c. 56.

(d) to exercise with respect to any recreation ground, village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed, such powers as may be exercised by an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, or section forty-four of the Public Health Acts Amendment Act, 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act, 1875, shall apply accordingly as if the parish council were a local authority within the meaning of those sections ; and

38 & 39 Vict. c. 55. 53 & 54 Vict. c. 59.

(e) to utilise any well, spring, or stream within their parish and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporation or person ; and

(f) to deal with any pond, pool, open ditch, drain or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to

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(*y*) As to alteration of areas under Adoptive Acts, see ss. 53 and 69 of this Act, *post*, and s. 59 of the Local Government Act, 1888, *ante*, p. 114.

(*z*) The purposes for which a parish council may acquire land under this section must be borne in mind by a county council in considering any application for an order for putting the compulsory clauses of the Lands Clauses Acts into operation under s. 9, *post*.

health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority ; and

(g) to acquire by agreement any right of way, whether within their parish or an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof ; and

(h) To accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof ; and

(i) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity ; and

(k) to contribute towards the expense of doing any of the things above-mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above-mentioned.

(2.) A parish council may let, or, with the consent of the parish meeting, sell or exchange, any land or buildings vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised, in the case of property which has been acquired at the expense of any rate, or is at the passing of this Act applied in aid of any rate, or would but for want of income be so applied, without the consent of the Local Government Board, or in any other case without such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates, provided that the consent or approval required under those Acts shall not be required for the letting for allotments of land vested in the parish council.

(3.) Nothing in this section shall derogate from any obligation of a district council with respect to the supply of water or the execution of sanitary works.

(4.) Notice of any application to the Board of Agriculture in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate.

Powers for acquisition of land.

9.(*a*)—(1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act,

(*a*) See the notes to this section in the separate work on this Act already referred to.

Sect. 9 (1).

except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

38 & 39 Vict. c. 55.

(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation (*b*).

50 & 51 Vict. c. 48. 53 & 54 Vict. c. 65.

(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed (*c*), and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement (*d*).

(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this subsection overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

(*b*) The inquiry here referred to is a preliminary inquiry, which may or may not lead to the holding of a public inquiry under the next sub-section.

(*c*) "Prescribed," *i.e.*, by the Local Government Board ; s. 75, *post.* Orders prescribing the procedure under this section to be followed by county councils and by councils of county boroughs were made by the Local Government Board on May 22nd and 23rd, 1885, respectively, and are set out, *post.*

(*d*) The order must incorporate the Lands Clauses Acts and parts of the Railways Clauses Act, 1845, "with the necessary adaptations." See sub-s. (10) of this section.

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(6.) A copy of any order made under this section shall be served in the prescribed manner (*e*), together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period (*e*) a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the prescribed period—

(a.) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order:

(b.) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order:

(c.) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

(8.) Sections two hundred and ninety-three to two hundred and ninety-six, and subsections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local inquiry held by the Local Government Board for the purposes of this section, as if those sections and subsections were herein re-enacted, and in terms made applicable to such inquiry.

(9.) The order shall be carried into effect, when made on the petition of a district council, by that council, and in any other case by the county council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (a), (b), and (c) of subsection (4) of that section are incorporated with this section and shall apply

8 & 9 Vict. c. 20.

(*e*) See the orders referred to in the last note. The prescribed period is one calendar month after the making of the order.

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accordingly (*f*) : Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

(11.) At any inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities or parties interested by themselves or their agents, and shall hear witnesses, but shall not, except in such cases as may be prescribed, hear counsel or expert witnesses.

(12.) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry (*g*) ; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board (*h*).

(*f*) The incorporated provisions of sub-s. (4) of s. 3 of the Allotments Act, 1887, are as follows :—

Sub-section (4)—

"Provided that—

"(a.) Any question of disputed compensation shall be referred to the arbitration of a single arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator, then on the application of either of them, by the Local Government Board, and the remuneration to be paid to the arbitrator appointed by the Local Government Board shall be fixed by that Board.

"(b.) If an arbitrator appointed for the purposes of this Act dies or becomes incapable to act before he has made his award, or fails to make his award within two months after he is appointed, his appointment shall determine, and the determination of the compensation shall be referred to another arbitrator appointed in like manner as if no arbitrator had been previously appointed : Provided always, that the same arbitrator may be re-appointed.

"(c.) An arbitrator appointed under this section shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly ; and further, the arbitrator, notwithstanding anything in the said Acts, shall determine the amount of the costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily."

(*g*) Inspectors of the Local Government Board may summon any person to be examined before them or to produce and verify on oath any books, contracts, agreements, accounts, or copies of the same (and not in relation to or involving any question of title to lands except the property of the local authority). They may examine witnesses on oath or require the party examined to make and subscribe a declaration of the truth of his evidence. Disobedience of any summons, refusing to produce, altering or concealing any books, etc., is a misdemeanor, and evidence falsely given before the inspector, is perjury. See Public Health Act, 1875, s. 296 ; 4 & 5 Will. 4, c. 76, s. 12 ; and 10 & 11 Vict. c. 109, ss. 20, 21.

(*h*) Section 294 of the Public Health Act, 1875, empowers the Board to make orders as to the costs of inquiries instituted by the Board, and as to the parties by whom, or the rates out of which, such costs shall be borne. See also sub-section (19), *infra*.

(13.) Sub-section (2) of section two, if the land is taken for allotment, and, whether it is or is not so taken, subsections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly (*i*). 50 & 51 Vict. c. 48. 53 & 54 Vict. c. 65.

(14.) Where the land is acquired otherwise than for allotments, it shall be assured to the parish council; and any land purchased by a county council for allotments under the Allotments Act, 1887 and 1890, and this Act, or any of them, shall be assured to the parish council, and in that case sections five to eight of the Allotments Act, 1887, shall apply as if the parish council were the sanitary authority (*k*).

(15.) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water, or of any right of way.

(16.) In this section the expression "allotments" includes common pasture where authorised to be acquired under the Allotments Act, 1887.

(17.) Where, under the Allotments Act, 1890, the Allotments Act, 1887, applies to the purchase of land by the county council, that Act shall apply as amended by this section, and the parish council shall have the like power of petitioning the county council as is given to six parliamentary electors by section two of the Allotments Act, 1890 (*l*).

(18.) This section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board and shall be carried into effect by the council of the county borough (*m*).

(19.) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this Act (*n*).

Hiring of land for allotments.

10.—(1.) The parish council shall have power to hire land for allotments, and if they are satisfied that allotments are required,

(*i*) The incorporated provisions, as adapted by the Local Government Board, are set out in the schedules to the orders referred to in note (*c*), *ante*, p. 602.

(*k*) By this section land acquired for allotments by a county council must be assured to the parish council, and that council is entrusted with the powers given by ss. 5 to 8 of the Allotments Act, 1887, as to the adaptation, management, letting, and use of the allotments, and the recovery of rent and possession. The county council cannot therefore now delegate any of these powers to the district council as they formerly could under s. 4 of the Allotments Act, 1890.

(*l*) See the Allotments Act, 1890, *ante*, p. 517.

(*m*) See note (*c*), *ante*, p. 602.

(*n*) See note (*h*), *ante*, p. 604, and s. 72 (4), *post*.

Sect. 10 (1). and are unable to hire by agreement on reasonable terms suitable land for allotments, they shall represent the case to the county council, and the county council may make an order authorising the parish council to hire compulsorily for allotments, for a period not less than fourteen years nor more than thirty-five years, such land in or near the parish as is specified in the order, and the order shall, as respects confirmation and otherwise, be subject to the like provisions as if it were an order of the county council made under the last preceding section of this Act, and that section shall apply as if it were herein re-enacted with the substitution of "hiring" for "purchase" and with the other necessary modifications (*o*).

(2.) A single arbitrator, who shall be appointed in accordance with the provisions of section three of the Allotments Act, 1887, and to whom the provisions of that section shall apply, shall have power to determine any question—

(a) as to the terms and conditions of the hiring ; or

(b) as to the amount of compensation for severance ; or

(c) as to the compensation to any tenant upon the determination of his tenancy ; or

(d) as to the apportionment of the rent between the land taken by the parish council and the land not taken from the tenant ; or

(e) as to any other matter incidental to the hiring of the land by the council, or the surrender thereof at the end of their tenancy ;

but the arbitrator in fixing the rent shall not make any addition in respect of compulsory hiring.

(3.) The arbitrator, in fixing rent or other compensation, shall take into consideration all the circumstances connected with the land, and the use to which it might otherwise be put by the owner during the term of hiring, and any depreciation of the value to the tenant of the residue of his holding caused by the withdrawal from the holding of the land hired by the parish council.

(4.) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land hired by the parish council shall as far as possible be provided for by taking such compensation into account in fixing, as the case may require, the rent to be paid by the parish council for the land hired by them, and the apportioned rent, if any, to be paid by the tenant for that portion of the holding which is not hired by the parish council.

(*o*) As to orders by a county council under this section, see s. 9 and notes, *ante*, and also the notes to this section in the separate work of the editors upon this Act, and see in particular sub-ss. (8), (9), *infra*.

(5.) The award of the arbitrator or a copy thereof, together with a report signed by him as to the condition of the land taken by the parish council, shall be deposited and preserved with the public books, writings, and papers of the parish, and the owner for the time being of the land shall at all reasonable times be at liberty to inspect the same and to take copies thereof.

(6.) Save as herein-after mentioned, sections five to eight of the Allotments Act, 1887, shall apply to any allotment hired by a parish council in like manner as if that council were the sanitary authority and also the allotment managers:

Provided that the parish council—

(a) may let to one person an allotment or allotments exceeding one acre, but, if the land is hired compulsorily, not exceeding in the whole four acres of pasture or one acre of arable and three acres of pasture; and

(b) may permit to be erected on the allotment any stable, cowhouse, or barn; and

(c) shall not break up, or permit to be broken up, any permanent pasture, without the assent in writing of landlord.

(7.) On the determination of any tenancy created by compulsory hiring a single arbitrator who shall be appointed in accordance with the provisions of section three of the Allotments Act, 1887, shall have power to determine as to the amount due by the landlord for compensation for improvements, or by the parish council for depreciation, but such compensation shall be assessed in accordance with the provisions of the Agricultural Holdings (England) Act, 1883. 46 & 47 Vict. c. 61.

(8.) The order for compulsory hiring may apply, with the prescribed adaptations, such of the provisions of the Lands Clauses Acts (including those relating to the acquisition of land otherwise than by agreement) as appear to the county council or Local Government Board sufficient for carrying into effect the order, and for the protection of the persons interested in the land and of the parish council (*p*).

(9.) Nothing in this section shall authorise the compulsory hiring of any mines or minerals, or confer any right to take, sell, or carry away any gravel, sand, or clay, or authorise the hiring of any land which is already owned or occupied as a small holding within the meaning of the Small Holdings Act, 1892. 55 & 56 Vict. c. 31.

(10.) If the land hired under this section shall at any time during the tenancy thereof by the parish council be shown to the

(*p*) The adaptations of the Lands Clauses Act are prescribed by an order of the Local Government Board of May 21st, 1895, which is set out, *post*.

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satisfaction of the county council to be required by the landlord for the purpose of working and getting the mines, minerals, or surface minerals thereunder, or for any road or work to be used in connexion with such working or getting, it shall be lawful for the landlord of such land to resume possession thereof upon giving to the parish council twelve calendar months previous notice in writing of his intention so to do, and upon such resumption the landlord shall pay to the parish council and to the allotment holders of the land for the time being such sum by way of compensation for the loss of such land for the purposes of allotments as may be agreed upon by the landlord and the parish council, or in default of such agreement as may be awarded by a single arbitrator to be appointed in accordance with the provisions of section three of the Allotments Act, 1887, and the provisions of that section shall apply to such arbitrator.

The word "landlord" in this subsection means the person for the time being entitled to receive the rent of the land hired by the parish council.

(11.) The Local Government Board shall annually lay before Parliament a report of any proceedings under this and the preceding section.

Restrictions on expenditure.

11.—(1.) A parish council shall not, without the consent of a parish meeting, incur expenses or liabilities which will involve a rate exceeding threepence in the pound for any local financial year, or which will involve a loan.

(2.) A parish council shall not, without the approval of the county council, incur any expense or liability which will involve a loan. (*q*)

(3.) The sum raised in any local financial year by a parish council for their expenses (other than expenses under the adoptive Acts) shall not exceed a sum equal to a rate of sixpence in the pound on the rateable value of the parish at the commencement of the year, and for the purpose of this enactment the expression "expenses" includes any annual charge, whether of principal or interest, in respect of any loan.

(4.) Subject to the provisions of this Act, the expenses of a parish council and of a parish meeting, including the expenses of any poll, shall be paid out of the poor rate; and where there is a parish council that council shall pay the said expenses

(*q*) The consent of the county council to the actual borrowing is required by the next section. The county council ought, it is submitted, before approving the incurring of an expense or liability under this clause, satisfy themselves as to the object for which it is proposed to be incurred, and should require that the consent of the parish meeting be first obtained (under sub-s. (1)), and should see that the parish council are not exceeding the borrowing limit imposed by s. 12 (1), *post*.

of the parish meeting of the parish; and the parish council, and where there is no parish council the chairman of the parish meeting, shall, for the purpose of obtaining payment of such expenses, have the same powers as a board of guardians have for the purpose of obtaining contributions to their common fund.

(5.) The demand note for any rate levied for defraying the expenses of a parish council or a parish meeting, together with other expenses, shall state in the prescribed form the proportion of the rate levied for the expenses of the council or meeting, and the proportion (if any) levied for the purpose of any of the adoptive Acts.

Borrowing by parish council.

12.—(1.) A parish council for any of the following purposes, that is to say—

(a) for purchasing any land, or building any buildings, which the council are authorised to purchase or build; and

(b) for any purpose for which the council are authorised to borrow under any adoptive Acts; and

(c) for any permanent work or other thing which the council are authorised to execute or do, and the cost of which ought, in the opinion of the county council and the Local Government Board, to be spread over a term of years;

may, with the consent of the county council and the Local Government Board, borrow money in like manner and subject to the like conditions as a local authority may borrow for defraying expenses incurred in the execution of the Public Health Acts, and sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine of the Public Health Act, 1875, shall apply accordingly, except that the money shall be borrowed on the security of the poor rate and of the whole or part of the revenues of the parish council, and except that as respects the limit of the sum to be borrowed, one half of the assessable value shall be substituted for the assessable value for two years (*r*).

38 & 39 Vict. c. 55.

(*r*) Before giving their consent to borrowing by a parish council, the county council must satisfy themselves (i.) that the purpose is one for which the parish council is authorized to borrow (and in the case of works, that the cost ought to be spread over a term of years); (ii.) that the proposed loan will not bring the existing debt above the prescribed limit; and (iii.) that the consent of the parish meeting under s. 11 (1) has been obtained. It is somewhat doubtful on the construction of this section whether the consent of the county council, as well as of the Local Government Board, to the period of repayment is required. Such consent by the board is required by s. 234 of the Public Health Act, 1875, and the effect of the present section may be to substitute the consent of both bodies for that of the board under the section referred to. Probably if the period were fixed by the county council, the board would adopt that period in their sanction. The maximum period is sixty years from the date of borrowing. A consent by the county council under this section ought, it is thought, to be under their seal.

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(2.) A county council may lend to a parish council any money which the parish council are authorized to borrow, and may, if necessary, without the sanction of the Local Government Board, and irrespectively of any limit of borrowing, raise the money by loan, subject to the like conditions and in the like manner as any other loan for the execution of their duties, and subject to any further conditions which the Local Government Board may by general or special order impose.(*s*)

(3.) A parish council shall not borrow for the purposes of any of the adoptive Acts otherwise than in accordance with this Act, but the charge for the purpose of any of the adoptive Acts shall ultimately be on the rate applicable to the purposes of that Act.

Footpaths and roads.

13.—(1.) The consent of the parish council and of the district council shall be required for the stopping, in whole or in part, or diversion, of a public right of way within a rural parish, and the consent of the parish council shall be required for a declaration that a highway in a rural parish is unnecessary for public use and not repairable at the public expense, and the parish council shall give public notice of a resolution to give any such consent, and the resolution shall not operate—

(a) unless it is confirmed by the parish council at a meeting held not less than two months after the public notice is given ; nor

(b) if a parish meeting held before the confirmation resolve that the consent ought not to be given.

(2.) A parish council may, subject to the provisions of this Act with respect to restrictions on expenditure, undertake the repair and maintenance of all or any of the public footpaths within their parish, not being footpaths at the side of a public road, but this power shall not nor shall the exercise thereof relieve any other authority or person from any liability with respect to such repair or maintenance.

Public property and charities.

14 (*t*).—(1.) Where trustees hold any property for the purposes of a public recreation ground or of public meetings, or of allotments, whether under Inclosure Acts or otherwise, for the benefit of the inhabitants of a rural parish, or any of them, or for any public purpose connected with a rural parish, except for an ecclesiastical

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(*s*) As to borrowing by a county council, see s. 69 of the Local Government Act, 1888, *ante*, p. 132. Further conditions as to borrowing by county councils under the provisions in the text have been imposed by a general Order of the Local Government Board of November 5th, 1895, which is set out , *post*.

(*t*) The provisions of this section must be borne in mind by county councils in making orders as to groups of parishes under s. 38, *post*.

charity (*u*), they may, with the approval of the Charity Commissioners, transfer the property to the parish council of the parish, or to persons appointed by that council, and the parish council, if they accept the transfer, or their appointees, shall hold the property on the trusts and subject to the conditions on which the trustees held the same. Sect. 14 (1).

(2.) Where overseers of a rural parish as such are, either alone or jointly with any other persons, trustees of any parochial charity, such number of the councillors of the parish or other persons, not exceeding the number of the overseer trustees, as the council may appoint, shall be trustees in their place, and, when the charity is not an ecclesiastical charity, this enactment shall apply as if the churchwardens as such were specified therein as well as the overseers (*x*).

(3.) Where the governing body of a parochial charity other than an ecclesiastical charity does not include any persons elected by the ratepayers or parochial electors or inhabitants of the parish, or appointed by the parish council or parish meeting, the parish council may appoint additional members of that governing body not exceeding the number allowed by the Charity Commissioners in each case; and if the management of any such charity is vested in a sole trustee, the number of trustees may, with the approval of the Charity Commissioners, be increased to three, one of whom may be nominated by such sole trustee and one by the parish council or parish meeting. Nothing in this subsection shall prejudicially affect the power or authority of the Charity Commissioners, under any of the Acts relating to charities, to settle or alter schemes for the better administration of any charity.

(4.) Where the vestry of a rural parish are entitled, under the trusts of a charity other than an ecclesiastical charity, to appoint any trustees or beneficiaries of the charity, the appointment shall be made by the parish council of the parish, or in the case of beneficiaries, by persons appointed by the parish council.

(5.) The draft of every scheme relating to a charity, not being an ecclesiastical charity, which affects a rural parish, shall on or before the publication of the notice of the proposal to make an order for such scheme in accordance with section six of the Charitable Trusts Act, 1860, be communicated to the council of the parish, and where there is no parish council to the chairman of the parish meeting, and, in the case of a council, the council may, 23 & 24 Vict c. 136.

(*u*) See this expression defined, *post*, s. 75; and see *Re Ross's Charity*, noted *infra*, and *Re Perry Almshouses Charity*, W. N. 1898, p. 14.

(*x*) The effect of the last paragraph of this clause is that the parish council can appoint trustees in place of the churchwardens, where they, whether joined with the overseers or not, are made trustees by the instrument creating a non-ecclesiastical charity. *Re Ross's Charity*, [1897] 2 Ch. 397; 66 L. J. Ch. 662; 77 L. T. (N.S.) 89; 46 W. R. 27; 61 J. P. 742.

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subject to the provisions of this Act with respect to restrictions on expenditure, and to the consent of the parish meeting, either support or oppose the scheme, and shall for that purpose have the same right as any inhabitants of a place directly affected by the scheme.

(6.) The accounts of all parochial charities, not being ecclesiastical charities, shall annually be laid before the parish meeting of any parish affected thereby, and the Charitable Trusts Amendment Act, 1855, shall apply with the substitution in section forty-four of the parish meeting for the vestry, and of the chairman of the parish meeting for the churchwardens, and the names of the beneficiaries of dole charities shall be published annually in such form as the parish council, or where there is no parish council the parish meeting, think fit.

18 & 19 Vict. c. 124.

(7.) The term of office of a trustee appointed under this section shall be four years, but of the trustees first appointed as aforesaid one half, as nearly as may be, to be determined by lot, shall go out of office at the end of two years from the date of their appointment, but shall be eligible for re-appointment.

(8.) The provisions of this section with respect to the appointment of trustees, except so far as the appointment is transferred from the vestry, shall not apply to any charity until the expiration of forty years from the date of the foundation thereof, or, in the case of a charity founded before the passing of this Act by a donor or by several donors any one of whom is living at the passing of this Act, until the expiration of forty years from the passing of this Act, unless with the consent of the surviving donor or donors.

(9.) Whilst a person is trustee of a parochial charity he shall not, nor shall his wife or any of his children, receive any benefit from the charity.

Delegated powers of parish councils.

15. A rural district council may delegate to a parish council any power which may be delegated to a parochial committee under the Public Health Acts, and thereupon those Acts shall apply as if the parish council were a parochial committee, and where such district council appoint a parochial committee consisting partly of members of the district council and partly of other persons, those other persons shall, where there is a parish council, be or be selected from the members of the parish council.

Complaint by parish council of default of district council.

16.—(1.) Where a parish council resolve that a rural district council ought to have provided the parish with sufficient sewers, or to have maintained existing sewers, or to have provided the parish with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or to have enforced with

regard to the parish any provisions of the Public Health Acts which it is their duty to enforce, and have failed so to do, or that they have failed to maintain and repair any highway in a good and substantial manner, the parish council may complain to the county council, and the county council, if satisfied after due inquiry that the district council have so failed as respects the subject-matter of the complaint, may resolve that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council, and they shall be transferred accordingly. Sect. 16 (1).

(2.) Upon any complaint under this section the county council may, instead of resolving that the duties and powers of the rural district council be transferred to them, make such an order as is mentioned in section two hundred and ninety-nine of the Public Health Act, 1875, and may appoint a person to perform the duty mentioned in the order, and upon such appointment sections two hundred and ninety-nine to three hundred and two of the Public Health Act, 1875, shall apply with the substitution of the county council for the Local Government Board (*y*). 38 & 39 Vict. c. 55.

(*y*) Section 299 of the Public Health Act, 1875, provides as follows:—"Where complaint is made to the Local Government Board that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce, the Local Government Board, if satisfied, after due inquiry, that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of mandamus or the Local Government Board may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such expenses and costs may be removed into the Queen's Bench Division, and be enforced in the same manner as if the same were an order of such court. Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as hereinafter provided) the powers of levying rates, and the Local Government Board may from time to time, by order, change any person so appointed."

Sections 300 to 302 make provision for the recovery of the costs and expenses from the defaulting authority, and empower the Local Government Board to obtain a loan for the purposes of such expenses, such loan to be charged upon the local rate and to be a debt due from the defaulting authority. Where a parish council has made a complaint under the provisions in the text to a county council, that body may act in one of two ways: (i.) they may, under sub-s. (1), resolve to exercise the powers of the district council in respect of the matter of the complaint. In this case the provisions of s. 63, *post*, will apply; or (ii.) they may, instead of taking over the duties

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(3.) Where a rural district council have determined to adopt plans for the sewerage or water supply of any contributory place within the district, they shall give notice thereof to the parish council of any parish for which the works are to be provided before any contract is entered into by them for the execution of the works.

Parish officers and parish documents.

17.—(1.) A parish council may appoint one of their number to act as clerk of the council without remuneration.

(2.) If no member of the parish council is appointed so to act, and there is an assistant overseer, he, or such one of the assistant overseers, if more than one, as may be appointed by the council, shall be the clerk of the parish council, and the performance of his duties as such shall be taken into account in determining his salary.

(3.) If there is no assistant overseer, the parish council may appoint a collector of poor rates, or some other fit person, to be their clerk, with such remuneration as they may think fit.

(4.) A parish council shall not appoint to the office of vestry clerk.

(5.) When a parish council act as a parochial committee by delegation from the district council they shall have the services of the clerk of the district council, unless the district council otherwise direct.

(6.) The parish council may appoint one of their own number or some other person to act as treasurer without remuneration, and the treasurer shall give such security as may be required by regulations of the county council.

(7.) All documents required by statute or by standing orders of Parliament to be deposited with the parish clerk of a rural parish shall, after the election of a parish council, be deposited with the clerk, or, if there is none, with the chairman, of the parish council, and the enactments with respect to the inspection of, and taking copies of, and extracts from, any such documents shall apply as if the clerk, or chairman, as the case may be, were mentioned therein.

(8.) The custody of the registers of baptisms, marriages, and burials, and of all other books and documents containing entries wholly or partly relating to the affairs of the church or to ecclesiastical charities, except documents directed by law to be kept with the public books, writings, and papers of the parish, shall remain as provided by the existing law unaffected by this

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and powers of the defaulting district council, take similar measures to those which may be taken by the Local Government Board under s. 299 of the Public Health Act, 1875, for compelling the district council to perform their duty in the matter of the complaint; if they adopt this course, they are to have the powers of the Local Government Board under ss. 299 to 302 of the Act referred to.

Act. All other public books, writings, and papers of the parish, and all documents directed by law to be kept therewith, shall either remain in their existing custody, or be deposited in such custody as the parish council may direct. The incumbent and churchwardens on the one part, and the parish council on the other, shall have reasonable access to all such books, documents, writings, and papers, as are referred to in this subsection, and any difference as to custody or access shall be determined by the county council. Sect. 17 (8).

(9.) Every county council shall from time to time inquire into the manner in which the public books, writings, papers, and documents under the control of the parish council or parish meeting are kept with a view to the proper preservation thereof, and shall make such orders as they think necessary for such preservation, and those orders shall be complied with by the parish council or parish meeting (*z*).

18.—(1.) A county council may, on application by the parish council, or not less than one tenth of the parochial electors of a parish, and on being satisfied that the area or population of the parish is so large, or different parts of the population so situated, as to make a single parish meeting for the election of councillors impracticable or inconvenient, or that it is desirable for any reason that certain parts of the parish should be separately represented on the council, order that the parish be divided for the purpose of electing parish councillors into wards, to be called parish wards, with such boundaries and such number of councillors for each ward as may be provided by the order (*a*). Parish wards.

(2.) In the division of a parish into wards regard shall be had to the population according to the last published census for the time being, and to the evidence of any considerable change of

(*z*) The jurisdiction of the county council to make orders as to the proper preservation of documents is limited to such documents as have passed under the control of the parish council under the preceding sub-section ; but under that sub-section it appears that the county council may be called to decide whether the custody of particular documents ought or ought not to be under the control of the parish council. It has been held that the tithe apportionment map of a parish is a document placed under the control of the parish council by this section, and that an order of a county council that it shall be deposited in such custody as the parish council may direct can be enforced by an order of justices under 23 & 24 Vict. c. 23, s. 28. *Lewis* v. *Poole* (WRIGHT and KENNEDY, JJ.), [1898] 1 Q. B. 164 ; 67 L. J. Q. B. 73 ; 77 L. T. (N.S.) 369 ; 46 W. R. 93 ; 61 J. P. 776.

(*a*) An order for the division of a parish into wards for the purpose of electing parish councillors can only be made if application be made under this section, and if the county council is satisfied of the existence of the circumstances here referred to. If the parish is divided into wards for the election of rural district councillors (see s. 60, *post*), it is desirable that in any division into wards under the text the same boundaries should be used for both purposes. A county council has also power to make orders preserving the rights of distinct parts of one and the same parish, without dividing the parish into wards. See s. 37, *post*.

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population since that census, and to area and to the distribution and pursuits of the population, and to all the circumstances of the case.

(3.) Any such order may be revoked or varied by the county council on application by either the council or not less than one tenth of the parochial electors of the parish, but while in force shall have effect as if enacted by this Act.

(4.) In a parish divided into parish wards there shall be a separate election of parish councillors for each ward.

Provisions as to small parishes.

19. In a rural parish not having a separate parish council, the following provisions shall, as from the appointed day, but subject to provisions made by a grouping order(*b*), if the parish is grouped with some other parish or parishes, have effect :—

(1.) At the annual assembly the parish meeting shall choose a chairman for the year ;

(2.) The parish meeting shall assemble not less than twice in each year ;

(3.) The parish meeting may appoint a committee of their own number for any purposes which, in the opinion of the parish meeting, would be better regulated and managed by means of such a committee, and all the acts of the committee shall be submitted to the parish meeting for their approval ;

(4.) All powers, duties, and liabilities of the vestry shall, except so far as they relate to the affairs of the church or to ecclesiastical charities, or are transferred by this Act to any other authority, be transferred to the parish meeting ;

(5.) The power and the duty of appointing the overseers, and of notifying the appointment, and the power of appointing and revoking the appointment of an assistant overseer, shall be transferred to and vest in the parish meeting, and the power given by this Act to a parish council of appointing trustees of a charity in the place of overseers or churchwardens, shall vest in the parish meeting ;

(6.) The chairman of the parish meeting and the overseers of the parish shall be a body corporate by the name of the chairman and overseers of the parish, and shall have perpetual succession, and may hold land for the purposes of the parish without licence in mortmain ; but shall in all respects act in manner directed by the parish meeting,

(*b*) In making a grouping order a county council must take care to show to what extent the provisions of this section are to be altered by the order. So far as they are left unaltered, the powers given by this section to each individual parish composing the group will continue to be exerciseable.

and any act of such body corporate shall be executed under the hands, or if an instrument under seal is required under the hands and seals, of the said chairman and overseers ; Sect. 19 (6).

(7.) The legal interest in all property which under this Act would, if there were a parish council, be vested on the appointed day in the parish council shall vest in the said body corporate of the chairman and overseers of the parish, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers (if any) as are requisite to give effect to this enactment ;

(8.) The provisions of this Act with respect to the stopping or diversion of a public right of way, or the declaring of a highway to be unnecessary and not repairable at the public expense, and with respect to a complaint to a county council of a default by a district council, shall apply, with the substitution of the parish meeting for the parish council ;

(9.) A rate levied for defraying the expenses of the parish meeting (when added to expenses under any of the adoptive Acts) shall not exceed sixpence in the pound in any local financial year ;

(10.) On the application of the parish meeting the county council may confer on that meeting any of the powers conferred on a parish council by this Act ;

(11.) Any act of the parish meeting may be signified by an instrument executed at the meeting under the hands, or, if an instrument under seal is required under the hands and seals, of the chairman presiding at the meeting and two other parochial electors present at the meeting.

PART II.

GUARDIANS AND DISTRICT COUNCILS.

20. As from the appointed day the following provisions shall apply to boards of guardians :— Election and qualification of guardians.

(1.) There shall be no ex-officio or nominated guardians :

(2.) A person shall not be qualified to be elected or to be a guardian for a poor law union unless he is a parochial elector of some parish within the union, or has during the whole of the twelve months preceding the election resided in the union, or in the case of a guardian for a parish wholly or partly situate within the area of a borough, whether a county borough or not, is qualified

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to be elected a councillor for that borough, and no person shall be disqualified by sex or marriage for being elected or being a guardian. So much of any enactment, whether in a public general or local and personal Act, as relates to the qualification of a guardian shall be repealed:

(3.) The parochial electors of a parish shall be the electors of the guardians for the parish, and, if the parish is divided into wards for the election of guardians, the electors of the guardians for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward:

(4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected;

(5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board (*c*):

(6.) The term of office of a guardian shall be three years, and one third, as nearly as may be, of every board of guardians shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly elected guardians. Provided as follows:—

(a.) Where the county council on the application of the board of guardians of any union in their county consider that it would be expedient to provide for the simultaneous retirement of the whole of the board of guardians for the union, they may direct that the members of the board of guardians for that union shall retire together on the fifteenth day of April in every third year, and such order shall have full effect, and where a union is in more than one county, an order may be made by a joint committee of the councils of those counties (*d*);

(b.) Where at the passing of this Act the whole of the guardians of any union, in pursuance of an order of the Local Government Board, retire together at the end of every third year, they shall continue so to retire, unless the county council, or a joint committee of the county councils, on the application of the board of

(*c*) See further as to these rules and the duties devolving upon county councils under them, s. 48, *post*.

(*d*) As to joint committees, see Local Government Act, 1888, s. 81, *ante* p. 155.

guardians or of any district council of a district wholly or partially within the union, otherwise direct. Sect. 20 (7).

(8.) A board of guardians may elect a chairman or vice-chairman or both, and not more than two other persons, from outside their own body, but from persons qualified to be guardians of the union, and any person so elected shall be an additional guardian and member of the board. Provided that on the first election, if a sufficient number of persons who have been ex-officio or nominated guardians of the union, and have actually served as such, are willing to serve, the additional members shall be elected from among those persons.

21. As from the appointed day,— Names of county districts and district councils.

(1.) Urban sanitary authorities shall be called urban district councils and their districts shall be called urban districts; but nothing in this section shall alter the style or title of the corporation or council of a borough:

(2.) For every rural sanitary district there shall be a rural district council whose district shall be called a rural district;

(3.) In this and every other Act of Parliament, unless the context otherwise requires, the expression "district council" shall include the council of every urban district, whether a borough or not, and of every rural district, and the expression "county district" shall include every urban and rural district whether a borough or not.

22. The chairman of a district council unless a woman or personally disqualified by any Act shall be by virtue of his office justice of the peace for the county in which the district is situate, but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate. Chairman of council to be justice.

23. As from the appointed day, where an urban district is not a borough— Constitution of district councils in urban districts not being boroughs.

(1.) There shall be no ex-officio or nominated members of the urban sanitary authority:

(2.) A person shall not be qualified to be elected or to be a councillor unless he is a parochial elector of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district, and no person shall be disqualified by sex or marriage for being elected or being a councillor. So much of any

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enactment whether in a public general or local and personal Act as relates to the qualification of a member of an urban sanitary authority shall be repealed :

(3.) The parochial electors of the parishes in the district shall be the electors of the councillors of the district, and, if the district is divided into wards, the electors of the councillors for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward :

(4.) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected :

(5.) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board (*e*) :

(6.) The term of office of a councillor shall be three years, and one-third, as nearly as may be, of the council, and if the district is divided into wards one-third, as nearly as may be, of the councillors for each ward, shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly elected councillors. Provided that a county council may on request made by a resolution of an urban district council, passed by two-thirds of the members voting on the resolution, direct that the members of such council shall retire together on the fifteenth day of April in every third year, and such order shall have full effect.

Rural district councils.

24.—(1.) The district council of every rural district shall consist of a chairman and councillors, and the councillors shall be elected by the parishes or other areas for the election of guardians in the district.

(2.) The number of councillors for each parish or other area in a rural district shall be the same as the number of guardians for that parish or area.

(3.) The district councillors for any parish or other area in a rural district shall be the representatives of that parish or area on the board of guardians, and when acting in that capacity shall be deemed to be guardians of the poor, and guardians as such shall not be elected for that parish or area.

(4.) The provisions of this Act with respect to the qualification, election, and term of office and retirement of guardians, and to the qualification of the chairman of the board of guardians, shall apply to district councillors and to the chairman of the district council of a rural district, and any person qualified to be a guardian

(*e*) See note (*c*), *ante*, p. 618.

for a union comprising the district shall be qualified to be a district councillor for the district. Sect. 24 (4).

(5.) Where a rural sanitary district is on the appointed day situate in more than one administrative county, such portion thereof as is situate in each administrative county shall, save as otherwise provided by or in pursuance of this or any other Act, be as from the appointed day a rural district ;(*f*)

Provided that where the number of councillors of any such district will be less than five, the provisions, so far as unrepealed, of section nine of the Public Health Act, 1875, with respect to the nomination of persons to make up the members of a rural authority to five, shall apply, unless the Local Government Board by order direct that the affairs of the district shall be temporarily administered by the district council of an adjoining district in another county with which it was united before the appointed day, and if they so direct, the councillors of the district shall be entitled, so far as regards those affairs, to sit and act as members of that district council, but a separate account shall be kept of receipts and expenses in respect of the district, and the same shall be credited or charged separately to the district. 38 & 39 Vict. c. 55.

(6.) The said provisions of section nine of the Public Health Act, 1875, shall apply to the district council of a rural district to which they apply at the passing of this Act.

(7.) Every district council for a rural district shall be a body corporate by the name of the district council, with the addition of the name of the district, or if there is any doubt as to the latter name, of such name as the county council direct, and shall have perpetual succession and a common seal, and may hold land for the purposes of their powers and duties without licence in mortmain.

Powers of district council with respect to sanitary and highway matters.

25.—(1.) As from the appointed day, there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of the rural sanitary authority in the district, and of any highway authority in the district, and highway boards shall cease to exist, and rural district councils shall be the successors of the rural sanitary authority and highway authority, and shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sections one hundred and forty-four to one hundred and forty-eight of the Public Health Act, 1875, and those sections shall apply in the case of a rural district and of the council thereof in like manner as in the case of an urban district and an urban authority. Provided that the council of any county may by order postpone within their county 38 & 39 Vict. c. 55.

(*f*) County councils were empowered to deal with these cases by orders under s. 36, *post*.

Sect. 25 (1). or any part thereof the operation of this section, so far as it relates to highways, for a term not exceeding three years from the appointed day or such further period as the Local Government Board may on the application of such council allow (*g*).

(2.) Where a highway repairable ratione tenuræ appears on the report of a competent surveyor not to be in proper repair, and the person liable to repair the same fails when requested so to do by the district council to place it in proper repair, the district council may place the highway in proper repair, and recover from the person liable to repair the highway the necessary expenses of so doing.

(3.) Where a highway authority receives any contribution from the county council towards the cost of any highway under section eleven, sub-section (10), of the Local Government Act, 1888, such contribution may be made, subject to any such conditions for the proper maintenance and repair of such highways, as may be agreed on between the county council and the highway authority (*h*).

51 & 52 Vict. c. 41.

(4.) Where the council of a rural district become the highway authority for that district, any excluded part of a parish under section two hundred and sixteen of the Public Health Act, 1875, which is situate in that district, shall cease to be part of any urban district for the purpose of highways, but until the council become the highway authority such excluded part of a parish shall continue subject to the said section.

(5.) Rural district councils shall also have such powers, duties, and liabilities of urban sanitary authorities under the Public Health Acts or any other Act, and such provisions of any of those Acts relating to urban districts shall apply to rural districts, as the Local Government Board by general order direct.

(6.) The power to make such general orders shall be in addition to and not in substitution for the powers conferred on the Board by section two hundred and seventy-six of the Public Health Act, 1875, or by any enactment applying that section ; and every order made by the Local Government Board under this section shall be forthwith laid before Parliament.

(*g*) The period of postponement authorized by this section expired on December 28th, 1897, the date on which the first rural district councils elected under this Act came into office ; see s. 84 (4), *post*. But in some cases the Local Government Board has, under the power in the text, allowed county councils to postpone the operation of this section as to highways for a further period ; except where this has been done the section is in full operation. An order postponing the operation of the section ought to contain provisions for the election of the highway authorities during the period of postponement. See s. 84 (4), *post*.

(*h*) See the section referred to, *ante*, p. 34, and also the Highways and Bridges Act, 1891, s. 3, *ante*, p. 531.

(7.) The powers conferred on the Local Government Board by the said section two hundred and seventy-six, or by any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish on the application of the parish council of that parish (*i*). Sect. 25 (7).

Duties and powers of district council as to rights of way, rights of common, and roadside wastes.

26.—(1.) It shall be the duty of every district council to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way, whether within their district or in an adjoining district in the county or counties in which the district is situate, where the stoppage or obstruction thereof would in their opinion be prejudicial to the interests of their district, and to prevent any unlawful encroachment on any roadside waste within their district (*k*).

(2.) A district council may with the consent of the county council for the county within which any common land is situate aid persons in maintaining rights of common where, in the opinion of the council, the extinction of such rights would be prejudicial to the inhabitants of the district; and may with the like consent exercise in relation to any common within their district all such powers as may, under section eight of the Commons Act, 1876, be exercised by an urban sanitary authority in relation to any common referred to in that section (*l*); and notice of any application to the Board of Agriculture in relation to any common within their district shall be served upon the district council. 39 & 40 Vict. c. 56.

(3.) A district council may, for the purpose of carrying into effect this section, institute or defend any legal proceedings, and generally take such steps as they deem expedient.

(4.) Where a parish council have represented to the district council that any public right of way within the district or an adjoining district in the county or counties in which the district is situate has been unlawfully stopped or obstructed, or that an unlawful encroachment has taken place on any roadside waste within the district, it shall be the duty of the district council, unless satisfied that the allegations of such representation are incorrect, to take proper proceedings accordingly; and if the

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(*i*) Under the provision in the text a county council may apply to the board to make an order investing a rural district council with urban powers in respect of their district or any contributory place therein.

(*k*) The county council has full power to take steps for asserting the right of the public to the use and enjoyment of the wastes at the side of the main roads. Local Government Act, 1888, s. 11 (1), *ante*, p. 21. The powers given by the text to the district council are apparently cumulative. See sub-section (6), *infra*.

(*l*) Under the text a county council may, it seems, sanction the expenditure of money by a district council for the purpose of maintaining or acquiring rights of common for the inhabitants of their district.

Sect. 26 (4.) district council refuse or fail to take any proceedings in consequence of such representation, the parish council may petition the county council for the county within which the way or waste is situate, and if that council so resolve the powers and duties of the district council under this section shall be transferred to the county council (*m*).

(5.) Any proceedings or steps taken by a district council or county council in relation to any alleged right of way shall not be deemed to be unauthorised by reason only of such right of way not being found to exist (*n*).

(6.) Nothing in this section shall affect the powers of the county council in relation to roadside wastes.

(7.) Nothing in this section shall prejudice any powers exercisable by an urban sanitary authority at the passing of this Act, and the council of every county borough shall have the additional powers conferred on a district council by this section.

Transfer of certain powers of of justices to district councils.

27.—(1.) As from the appointed day the powers, duties, and liabilities of justices out of session in relation to any of the matters following, that is to say,—

(a) the licensing of gang masters ;

(b) the grant of pawnbrokers' certificates ;

(c) the licensing of dealers in game ;

(d) the grant of licences for passage brokers and emigrant runners ;

(e) the abolition of fairs and alteration of days for holding fairs ;

(f) the execution as the local authority of the Acts relating to petroleum and infant life protection ;

when arising within a county district, shall be transferred to the district council of the district.

(2.) As from the appointed day, the powers, duties, and liabilities of quarter sessions in relation to the licensing of knackers' yards within a county district shall be transferred to the district council of the district.

(e.) All fees payable in respect of the powers, duties, and liabilities transferred by this section shall be payable to the district council (*o*).

Expenses of rural district council.

28. The expenses incurred by the council of an urban district in the execution of the additional powers conferred on the council

(*m*) As to the effect of a resolution of the county council transferring to themselves the powers of a district council, see s. 63, *post*.

(*n*) This provision seems intended to prevent the disallowance by the auditor of expenditure incurred in seeking to establish or protect a right of way which in the event proved to be non-existent.

(*o*) As to the application of this section to county boroughs, see s. 32, *post*.

by this Act shall, subject to the provistons of this Act, be defrayed in a borough out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying the expenses of the execution of the Public Health Act, 1875. Sect. 28. 38 & 39 Vict c. 55.

29. The expenses incurred by the council of a rural district shall, subject to the provisions of this Act, be defrayed in manner directed by the Public Health Act, 1875, with respect to expenses incurred in the execution of that Act by a rural sanitary authority, and the provisions of the Public Health Acts with respect to those expenses shall apply accordingly. Expenses of rural district council.

Provided as follows :

(a.) Any highway expenses shall be defrayed as general expenses :

(b.) When the Local Government Board determine any expenses under this Act to be special expenses and a separate charge on any contributory place, and such expenses would if not separately chargeable on a contributory place be raised as general expenses, they may further direct that such special expenses shall be raised in like manner as general expenses, and not by such separate rate for special expenses as is mentioned in section two hundred and thirty of the Public Health Act, 1875 : 38 & 39 Vict. c. 55.

(c.) A district council shall have the same power of charging highway expenses under exceptional circumstances on a contributory place as a highway board has in respect of any area under section seven of the Highways and Locomotives (Amendment) Act, 1878 : 41 & 42 Vict. c. 77.

(d.) Where highway expenses would, if this Act had not passed, have been in whole or in part defrayed in any parish or other area out of any property or funds other than rates, the district council shall make such provision as will give to that parish or area the benefit of such property or funds by way of reduction of the rates on the parish or area.

30. The provisions of this Part of this Act respecting guardians shall apply to the administrative county of London and to every county borough. Guardians in London and county boroughs.

31.—(1.) The provisions of this Act with respect to the qualification of the electors of urban district councillors, and of the persons to be elected, and with respect to the mode of conducting the election, shall apply as if members of the local board of Provisions as to London vestries and district boards.

Sect. 31 (1). Woolwich and the vestries elected under the Metropolis Management Acts, 1855 to 1890, or any Act amending those Acts, and the auditors for parishes elected under those Acts, and so far as respects the qualification of persons to be elected as if members of the district boards under the said Acts, were urban district councillors, and no person shall, ex officio, be chairman of any of the said vestries. Provided that the Elections (Hours of Poll) Act, 1885, shall apply to elections to the said vestries.

48 Vict. c. 10.

(2.) Each of the said vestries, except those electing district boards, and each of the said district boards and the local board of Woolwich, shall at their first meeting after the annual election of members elect a chairman for the year, and section forty-one of the Metropolis Management Act, 1855, shall apply only in case of the absence of such chairman, and the provisions of this Act with respect to chairmen of urban district councils being justices shall apply as if the said vestries and boards were urban district councils.

18 & 19 Vict. c. 120.

(3.) Nothing in any local and personal Act shall prevent any vestry in the county of London from holding their meeting at such time as may be directed by the vestry.

Application to county boroughs of provisions as to transfer of justices' powers.

32. The provisions of this Part of this Act respecting the powers, duties, and liabilities of justices out of session, or of quarter sessions, which are transferred to a district council, shall apply to a county borough as if it were an urban district, and the county borough council were a district council.

Power to apply certain provisions of Act to urban districts and London.

33.—(1.) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying with the necessary modifications the provisions of this Act with reference thereto.

(2.) Where it appears to the Local Government Board that, by reason of the circumstances connected with any parish in a municipal borough (including a county borough) or other urban district divided into wards, or with the parochial charities of that parish, the parish will not, if the majority of the body of trustees administering the charity are appointed by the council of the borough or district, be properly represented on that body, they may, by their order, provide that such of those trustees as are appointed by the council, or some of them, shall be appointed on

the nomination of the councillors elected for the ward or wards comprising such parish or any part of the parish. Sect. 33 (2).

(3.) Any order under this section may provide for its operation extending either to the whole or to specified parts of the area of the borough or urban district, and may make such provisions as seem necessary for carrying the order into effect.

(4.) The order shall not alter the incidence of any rate, and shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers.

(5.) An order under this section may also be made on the application of any representative body within a borough or district.

(6.) The provisions of this section respecting councils of urban districts shall apply to the administrative county of London in like manner as if the district of each sanitary authority in that county were an urban district, and the sanitary authority were the council of that district.

(7.) The Local Government Board shall consult the Charity Commissioners before making any order under this section with respect to any charity.

Supplemental provisions as to control of overseers in urban districts.

34. Where an order of the Local Government Board under this Act confers on the council of an urban district, or some other representative body within the district, either the appointment of overseers and assistant overseers, or the powers, duties, and liabilities of overseers, that order or any subsequent order of the Board may confer on such council or body the powers of the vestry under the third and fourth sections of the Poor Rate Assessment and Collection Act, 1869. 32 & 33 Vict. c. 41.

Restrictions on application of Act to London, etc.

35. Save as specially provided by this Act, this Part of this Act shall not apply to the administrative county of London or to a county borough.

PART III.

Areas and Boundaries.

Duties and powers of county council with respect to areas and boundaries.

36.—(1.) For the purpose of carrying this Act into effect in the case of—

(a) every parish and rural sanitary district which at the passing of this Act is situate partly within and partly without an administrative county ; and

(b) every parish which at the passing of this Act is situate partly within and partly without a sanitary district ; and

(c) every rural parish which has a population of less than two hundred ; and

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(d) every rural sanitary district which at the passing of this Act has less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district; and

(e) every rural parish which is co-extensive with a rural sanitary district;

every county council shall forthwith take into consideration every such case within their county, and whether any proposal has or has not been made as mentioned in section fifty-seven of the Local Government Act, 1888, shall as soon as practicable, in accordance with that section, cause inquiries to be made and notices given, and make such orders, if any, as they deem most suitable for carrying into effect this Act in accordance with the following provisions, namely:—

51 & 52 Vict. c. 41.

(i.) the whole of each parish, and, unless the county council for special reasons otherwise direct, the whole of each rural district shall be within the same administrative county;

(ii.) the whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district; and

(iii.) every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts.

(2.) Where a parish is at the passing of this Act situate in more than one urban district, the parts of the parish in each such district shall, as from the appointed day, unless the county council for special reasons otherwise direct, and subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same.

39 & 40 Vic c. 61.

(3.) Where a parish is divided by this Act, the county council may by order provide for the application to different parts of that parish of the provisions of this Act with respect to the appointment of trustees or beneficiaries of a charity and for the custody of parish documents, but the order, so far as regards the charity, shall not have any effect until it has received the approval of the Charity Commissioners.

(4.) Where a rural parish is co-extensive with a rural sanitary district, then, until the district is united to some other district or districts, and unless the county council otherwise direct, a separate election of a parish council shall not be held for the parish, but the district council shall, in addition to their own powers, have the powers of, and be deemed to be, the parish council.

(5.) Where an alteration of the boundary of any county or borough seems expedient for any of the purposes mentioned in this section, application shall be made to the Local Government Board for an order under section fifty-four of the Local Government Act, 1888.

(6.) Where the alteration of a poor law union seems expedient by reason of any of the provisions of this Act, the county council may, by their order, provide for such alteration in accordance with section fifty-eight of the Local Government Act, 1888, or otherwise, but this provision shall not affect the powers of the Local Government Board with respect to the alterations of unions.

(7.) Where an order for the alteration of the boundary of any parish or the division thereof, or the union thereof or of any part thereof, with another parish is proposed to be made after the appointed day, notice thereof shall, a reasonable time before it is made, be given to the parish council of that parish, or if there is no parish council, to the parish meeting, and that parish council or parish meeting, as the case may be, shall have the right to appear at any inquiry held by the county council with reference to the order, and shall be at liberty to petition the Local Government Board against the confirmation of the order.

(8.) Where the alteration of the boundary of any parish, or the division thereof or the union thereof or of part thereof with another parish, seems expedient for any of the purposes of this Act, provision for such alteration, division, or union may be made by an order of the county council confirmed by the Local Government Board under section fifty-seven of the Local Government Act, 1888. 51 & 52 Vict. c. 41.

(9.) Where a parish is by this Act divided into two or more parishes, those parishes shall, until it is otherwise provided, be included in the same poor law union in which the original parish was included.

(10.) Subject to the provisions of this Act, any order made by a county council in pursuance of this Part of this Act shall be deemed to be an order under section fifty-seven of the Local Government Act, 1888, and any board of guardians affected by an order shall have the same right of petitioning against that order as is given by that section to any other authority.

(11.) Where any of the areas referred to in section fifty-seven of the Local Government Act, 1888, is situate in two or more counties, or the alteration of any such area would alter the boundaries of a poor law union situate in two or more counties, a joint committee appointed by the councils of those counties shall, subject to the terms of delegation, be deemed to have and to have always had power to make orders under that section with respect

Sect. 36 (11).

to that area ; and where at the passing of this Act a rural sanitary district or parish is situate in more than one county, a joint committee of the councils of those counties shall act under this section, and if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee. Provided that any question arising as to the constitution or procedure of any such joint committee shall, if the county councils concerned failed to agree, be determined by the Local Government Board.

50 & 51 Vict. c. 61.

(12.) Every report made by the Boundary Commissioners under the Local Government Boundaries Act, 1887, shall be laid before the council of any administrative county or borough affected by that report, and before any joint committee of county councils, and it shall be the duty of such councils and joint committees to take such reports into consideration before framing any order under the powers conferred on them under this Act.

(13.) Every county council shall, within two years after the passing of this Act, or within such further period as the Local Government Board may allow either generally or with reference to any particular matter, make such orders under this section as they deem necessary for the purpose of bringing this Act into operation, and after the expiration of the said two years or further period the powers of the county council for that purpose shall be transferred to the Local Government Board, who may exercise those powers (*p*).

Provision as to parishes having parts with defined boundaries.

37. Where it is proved to the satisfaction of the county council that any part of a parish has a defined boundary, and has any property or rights distinct from the rest of the parish, the county council may order that the consent of a parish meeting held for that part of the parish shall be required for any such act or class of acts of the parish council affecting the said property or rights as is specified in the order (*q*).

Orders for grouping parishes and

38.—(1.) Where parishes are grouped, the grouping order shall make the necessary provisions for the name of the group, for the

(*p*) Numerous alterations of areas and boundaries were effected by or under this section in or shortly after the year 1894, and the object aimed at—that each parish should be wholly contained in one county district and each county district in one county—has been for the most part attained, and the section is practically spent. See the notes to this section in the authors' separate work on this Act, and see also as to alterations of boundaries, Part III. of the Local Government Act, 1888, and in particular ss. 57 and 59 of that Act, *ante* pp. 111, 114.

(*q*) A case for an order under this section might arise where the benefits of a charity were confined to the inhabitants of an ancient chapelry or some other definite part of a civil parish, and it was desired to give those inhabitants a separate voice in the choice of any trustees of the charity to be appointed by the parish council under s. 14, *ante*. Section 49 provides for the holding of a "parish meeting" for a part of a parish.

parish meetings in each of the grouped parishes, and for the election in manner provided by this Act of separate representatives of each parish on the parish council, and may provide for the consent of the parish meeting of a parish to any particular act of the parish council, and for any other adaptations of this Act to the group of parishes, or to the parish meetings in the group (*r*). dissolving groups.

(2.) Where parishes are grouped the whole area under each parish council shall, unless the county council for special reasons otherwise direct, be within the same administrative county and county district.

(3.) Where parishes are grouped, the grouping order shall provide for the application of the provisions of this Act with respect to the appointment of trustees and beneficiaries of a charity, and the custody of documents, so as to preserve the separate rights of each parish (*s*).

(4.) The parish meeting of any parish may apply to the county council for a grouping order respecting that parish, and, if the parish has a less population than two hundred, for a parish council (*t*), and any such application shall be forthwith taken into consideration by the county council.

(5.) The county council may, on the application of the council for any group of parishes or of the parish meeting for any parish included in a group of parishes, make an order dissolving the group, and shall by the order make such provision as appears necessary for the election of parish councils of the parishes in the group and for the adjustment of property, rights, and liabilities as between separate parishes and the group (*u*).

Provisions for increase and decrease of population.

39.—(1.) Where the population of a parish not having a separate parish council increases so as to justify the election of such council, the parish meeting may petition the county council, and the county council, if they think proper, may order the election of a parish council in that parish, and shall by the order make such provision as appears necessary for separating the parish from any group of parishes in which it is included, and for the alteration of the parish council of the group, and for the adjustment of property,

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(*r*) It must be borne in mind, in making an order under this section, that by s. 19, *ante*, the parish meeting and the corporate body of the chairman and overseers of a parish having no separate parish council, have certain powers and duties which will continue after the grouping order has been made, save so far as they are varied by that order.

(*s*) The provisions of the Act as to charities and custody of documents are contained in ss. 14 and 17, *ante*. These provisions must be applied by the grouping order in such a way that each parish of the group shall retain its rights.

(*t*) The power to apply for a parish council is not limited to parishes having a less population than 300 ; see s. (1) (a), *ante*, p. 593.

(*u*) As to adjustment, see s. 68, *post*.

Sect. 39 (1).

rights, and liabilities as between the group and the parish with a separate parish council.

(2.) Where the population of a parish, according to the last published census for the time being, is less than two hundred, the parish meeting may petition the county council, and the county council, if they think proper, may order the dissolution of the parish council, and from and after the date of the order this Act shall apply to that parish as to a parish not having a parish council. The order shall make such provision as appears necessary for carrying it into effect, and for the disposal and adjustment of the property, rights, and liabilities of the parish council. Where a petition for such an order is rejected, another petition for the same purpose may not be presented within two years from the presentation of the previous petition.

Certain orders of county council not to require confirmation.

40. A grouping order, and an order establishing or dissolving a parish council, or dissolving a group of parishes, and an order relating to the custody of parish documents or requiring the approval of the Charity Commissioners, and an order requiring the consent of the parish meeting for any part of the parish to any act or class of acts of the parish council, shall not require submission to or confirmation by the Local Government Board (*x*).

Reduction of time for appealing against county council orders.

41. The time for petitioning against an order under section fifty-seven of the Local Government Act, 1888, shall be six weeks instead of three months after the notice referred to in sub-section three of that section (*y*).

Validity of county council orders.

42. When an order under section fifty-seven of the Local Government Act, 1888, has been confirmed by the Local Government Board, such order shall at the expiration of six months from that confirmation be presumed to have been duly made, and to be within the powers of that section, and no objection to the legality thereof shall be entertained in any legal proceeding whatever (*z*).

PART IV.

SUPPLEMENTAL.

Parish Meetings and Elections.

Removal of disqualification of

43. For the purposes of this Act a woman shall not be disqualified by marriage for being on any local government register

(*x*) The orders referred to are those made under ss. 1 (1), 38, 39, 17, 36 (3), and 37 of this Act, *ante*.

(*y*) See the sub-section referred to, *ante*, p. 112.

(*z*) This provision may be usefully resorted to in case of questions arising as to whether an order was *intra vires* or not.

of electors, or for being an elector of any local authority, provided that a husband and wife shall not both be qualified in respect of the same property (*a*). Sect. 43. married women.

44.—(1.) The local government register of electors and the parliamentary register of electors, so far as they relate to a parish shall, together, form the register of the parochial electors of the parish; and any person whose name is not in that register shall not be entitled to attend a meeting or vote as a parochial elector, and any person whose name is in that register shall be entitled to attend a meeting and vote as a parochial elector unless prohibited from voting by this or any other Act of Parliament. Register of parochial electors.

(2.) Where the parish is in a parliamentary borough, such portion of the parliamentary register of electors for the county as contains the names of persons registered in respect of the ownership of any property in the parish shall be deemed to form part of the parliamentary register of electors for the parish within the meaning of this section.

(3.) The lists and register of electors in any parish shall be framed in parts for wards of urban districts and parishes in such manner that they may be conveniently used as lists for polling at elections for any such wards.

(4.) Nothing in any Act shall prevent a person, if duly qualified, from being registered in more than one register of parochial electors.

(5.) Where in that portion of the parliamentary register of electors which relates to a parish a person is entered to vote in a polling district other than the district comprising the parish, such person shall be entitled to vote as a parochial elector for that parish, and in addition to an asterisk there shall be placed against his name a number consecutive with the other numbers in the list.

(6.) Where the revising barrister in any list of voters for a parish would—

(a.) In pursuance of section seven of the County Electors Act, 1888, place an asterisk or other mark against the name of any person; or 51 Vict. c. 10.

(b.) In pursuance of section four of the Registration Act, 1885, erase the name of any person otherwise than by reason

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(*a*) The effect of this provision is, that coverture does not disentitle a married woman who is otherwise qualified to have her name inserted on a local government register of electors, "for the purposes of this Act," viz., as a parochial elector. The disability of coverture still exists with regard to the power to vote as a county elector. See Municipal Corporations Act, 1882, s. 63, and notes, *ante*, p. 290. A married woman is not qualified to be a parochial elector by reason of her ownership of property, there being no ownership qualification for local government electors. *Drax* v. *Ffooks*, [1896] 1 Q. B. 238; 65 L. J. Q. B. 270; 74 L. T. 43; 44 W. R. 393; 60 J. P. 214; 12 T. L. R. 185.

Sect. 44 (6).

of that name appearing more than once in the lists for the same parish ; or

41 & 42 Vict. c. 26. 48 & 49 Vict. c. 15.

(c.) in pursuance of section twenty-eight of the Parliamentary and Municipal Registration Act, 1878, as amended by section five of the Registration Act, 1885, place against the name of a person a note to the effect that such person is not entitled to vote in respect of the qualification contained in the list,

the revising barrister shall, instead of placing that mark or note, or erasing the name, place against the name, if the person is entitled to vote in respect of that entry as a county elector or burgess, a mark signifying that his name should be printed in division three of the list, or if he is entitled to vote only as a parochial elector, a mark signifying that he is entitled to be registered as a parochial elector, and the name so marked shall not be printed in the parliamentary register of electors, but shall be printed, as the case requires, either in division three of the local government register of electors, or in a separate list of parochial electors.

(7.) Where the name of a person is entered both in the ownership list and in the occupation list of voters in the same parish, and the revising barrister places against that name a mark or note signifying that the name should be printed in division three of the list, an asterisk or other mark shall be there printed against the name, and such person shall not be entitled to vote as a parochial elector in respect of that entry.

(8.) Such separate list shall form part of the register of parochial electors of the parish, and shall be printed at the end of the other lists of electors for the parish, and the names shall be numbered consecutively with the other names on those lists, and the law relating to the register of electors shall, with the necessary modifications, apply accordingly, and the lists shall, for the purposes of this Act, be deemed to be part of such register.

(9.) Any person may claim for the purpose of having his name entered in the parochial electors list, and the law relating to claims to be entered in lists of voters shall apply.

(10.) The clerk of the county council or town clerk, as the case may be, shall, in printing the lists returned to him by the revising barrister, do everything that is necessary for carrying into effect the provisions of this section with respect to the persons whose names are marked by the revising barrister in pursuance of this section.

45. *Supplemental provisions as to parish meetings.*]

46. (*b*)—(1.) A person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district other than a borough or of a board of guardians if he— Sect. 46 (1). Disqualifications for parish or district council.

(a) is an infant or an alien ; or

(b) has within twelve months before his election, or since his election, received union or parochial relief ; or

(c) has, within five years before his election or since his election, been convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon, or has, within or during the time aforesaid, been adjudged bankrupt, or made a composition or arrangement with his creditors ; or

(d) holds any paid office under the parish council or district council or board of guardians, as the case may be ; or

(e) is concerned in any bargain or contract entered into with the council or board, or participates in the profit of any such bargain or contract or of any work done under the authority of the council or board.

(2.) Provided that a person shall not be disqualified for being elected or being a member or chairman of any such council or board by reason of being interested—

(a) in the sale or lease of any lands or in any loan of money to the council or board, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood ; or

(b) in any newspaper in which any advertisement relating to the affairs of the council or board is inserted ; or

(c) in any contract with the council or board as a shareholder in any joint stock company ; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council.

(3.) Where a person who is a parish councillor, or is a candidate for election as a parish councillor, is concerned in any such bargain

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(*b*) This section may be compared with s. 39 of the Municipal Corporations Act, *ante*, p. 275. It is submitted that the powers of dispensing with the prohibition mentioned in sub-s. (2) (c), and the removal of a disqualification under sub-s. (3), ought to be by order under the seal of the county council

Sect. 46 (3). or contract, or participates in any such profit, as would disqualify him for being a parish councillor, the disqualification may be removed by the county council if they are of opinion that such removal will be beneficial to the parish.

(4.) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.

(5.) A person disqualified for being a guardian shall also be disqualified for being a rural district councillor (*c*).

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Supplemental provisions as to parish councils.

47.—(1.) If at the annual election of parish councillors any vacancies are not filled by election, such number of the retiring councillors as are not re-elected, and are required to fill the vacancies, shall, if willing, continue to hold office. The councillors so to continue shall be those who were highest on the poll at the previous election, or if the numbers were equal or there was no poll, as may be determined by the parish meeting, or if not so determined, by the chairman of the parish council.

(2.) A retiring parish councillor or chairman of a parish council or parish meeting shall be re-eligible.

(3.) A parish councillor may, by notice in writing to the chairman of the council, resign his office, and a chairman of a parish council or parish meeting may resign his chairmanship by notice in writing to the council or meeting.

(4.) A casual vacancy among parish councillors or in the office of chairman of the council shall be filled by the parish council, and where there is no parish council, a casual vacancy in the office of chairman of the parish meeting shall be filled by the parish meeting, and the person elected shall retire from office at the time when the vacating councillor or chairman would have retired.

(5.) If any parish council become unable to act by reason of a want of councillors, whether from failure to elect or otherwise, the county council may order a new election, and may by order make such provision as seems expedient for authorising any person to act temporarily in the place of the parish council and of the chairman thereof (*d*).

(*c*) Sub-sections (6) to (10) do not affect county councils.

(*d*) A similar power as to district councils is given by s. 59 (5), *post*. See also as to the power of a county council to remove difficulties in connection with elections under this Act, s. 48 (5), and the Local Government (Elections) Act, 1896, *post*. In case of a resort to the expedient of authorizing a person

48.—(1.) The election of a parish councillor shall be at a parish meeting, or at a poll consequent thereon. Sect. 48 (1).

Supplemental provisions as to elections, polls, and tenure of office.

(2.) Rules framed under this Act by the Local Government Board in relation to elections (*e*) shall, notwithstanding anything in any other Act, have effect as if enacted in this Act, and shall provide, amongst other things—

(i.) for every candidate being nominated in writing by two parochial electors as proposer and seconder and no more ;

(ii.) for preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district ;

(iii.) for preventing an elector at an election for a parish divided into parish wards from subscribing a nomination paper or voting for more than one ward ;

(iv.) for fixing or enabling the county council to fix the day of the poll and the hours during which the poll is to be kept open, so, however, that the poll shall always be open between the hours of six and eight in the evening ;

(v.) for the polls at elections held at the same date and in the same area being taken together, except where this is impracticable ;

(vi.) for the appointment of returning officers for the elections.

(3.) At every election regulated by rules framed under this Act, the poll shall be taken by ballot, and the Ballot Act, 1872, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and sections seventy-four and seventy-five and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts) shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that— 35 & 36 Vict. c. 33. 47 & 48 Vict. c. 70. 45 & 46 Vict. c. 50.

(a) section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes ; and

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to act temporarily in the place of the parish council, it is submitted that the powers of the person so authorized should be defined by the order.

(*e*) The practice of the Local Government Board was at first to issue each year separate sets of rules applicable to the annual elections of each of the bodies to whose election this Act applies ; but at the beginning of the year 1898 permanent rules were issued for the elections of guardians and district and parish councillors. Under these rules county councils have various powers and duties, such as fixing the day and hours of poll.

Sect. 48 (3).

(b) section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the First Schedule to that Act.

(4.) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and section fifty-six of that Act, shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of guardians and of district councillors of a county district not a borough, and of members of the local board of Woolwich, and of a vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same. Provided that—

(a) the provisions as to resignation shall not apply to guardians, and district councillors of a rural district shall be in the same position with respect to resignation as members of a board of guardians ; and

(b) nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election ; and

(c) the rules may provide for the incidence of the charge of the expenses of the elections of guardians being the same as heretofore.

(5.) If any difficulty arises as respects the election of any individual councillor or guardian, or member of any such local board or vestry as aforesaid, or auditor, and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.

(6.) Any ballot boxes, fittings, and compartments provided by or belonging to any public authority, for any election (whether parliamentary, county council, municipal, school board, or other), shall, on request, and if not required for immediate use by the said authority, be lent to the returning officer for an election under this Act, upon such conditions and either free of charge or, except in the prescribed cases, for such reasonable charge as may be prescribed.

(7.) The expenses of any election under this Act shall not exceed the scale fixed by the county council, and if at the beginning of

one month before the first election under this Act a county council have not framed any such scale for their county, the Local Government Board may frame a scale for the county, and the scale so framed shall apply to the first election, and shall have effect as if it had been made by the county council, but shall not be alterable until after the first election. Sect. 48 (7).

(8.) This section shall, subject to any adaptations made by the said rules, apply in the case of every poll consequent on a parish meeting, as if it were a poll for the election of parish councillors.

Provision as to parish meeting for part of parish.

49. Where a parish meeting is required or authorised in pursuance of this Act to be held for a ward or other part of a parish, then—

(a) the persons entitled to attend and vote at the meeting, or at any poll consequent thereon, shall be the parochial electors registered in respect of qualifications in that ward or part; and

(b) the provisions of this Act with respect to parish meetings for the whole of a parish, including the provisions with respect to the convening of a parish meeting by parochial electors, shall apply as if the ward or part were the whole parish.

50 (*f*). *Supplemental provisions as to overseers.*]

51 (*f*). *Public notices.*]

52 (*f*). *Supplemental provisions as to transfer of powers.*]

Supplemental provisions as to adoptive Acts.

53.—(1.) Where on the appointed day any of the adoptive Acts is in force in a part only of a rural parish, the existing authority under the Act, or the parish meeting for that part, may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting.

(2.) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or, if the area is partly

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(*f*) Section 50 relates to the action to be taken by the guardians where default has been made in notifying the appointment of overseers, under ss. 5 or 33, *ante*; s. 51 to the giving of parish notices; and s. 52 contains further provisions as to the transfer of powers to the new parish authorities. These sections do not directly affect county councils.

Sect. 53 (2).

comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.

(3.) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited, and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

(4.) The county council on the application of a parish council may, by order, alter the boundaries of any such area if they consider that the alteration can properly be made without any undue alteration of the incidence of liability to rates and contributions or of the right to property belonging to the area, regard being had to any corresponding advantage to persons subject to the liability or entitled to the right (*g*).

Effect on parish council of constitution of urban district.

54.—(1.) Where a new borough is created, or any other new urban district is constituted, or the area of an urban district is extended, then—

(a) as respects any rural parish or part of a rural parish which will be comprised in the borough or urban district, provision shall be made, either by the constitution of a new parish, or by the annexation of the parish or parts thereof to another parish or parishes, or otherwise, for

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(*g*) As to the constitution of the joint committee referred to in this section, and the apportionment of the expenses of the adoptive Acts where those Acts are the Burial Acts, see the Local Government (Joint Committees) Act, 1897, *post*. The provisions of this section should be borne in mind by county councils when altering areas in which any of the adoptive Acts (as to which see s. 7, *ante*) are in force. It would seem to be contrary to the spirit of the Act to attempt to set up a special authority under an adoptive Act (*e.g.*, a burial board), this Act having put an end to such authorities in rural parishes. It is conceived that the power given by sub-s. (4) of this section to alter the area under an adoptive Act can rarely be exercised, having regard to the limitations upon its exercise which the sub-section imposes. But where the alteration of the area under any local authority is necessary or proper for the purposes of an order under s. 57 of the Local Government Act, 1888, *ante*, p. 111, the county council has power to alter that area under s. 59 of the same Act, *ante*, p. 114. It has been held that the county council have such power in respect of an area under the Burial Acts. *R.* v. *Durham County Council* (WRIGHT and BRUCE, JJ.), January 13th, 1897; L. G. Chronicle, 1897, p. 70.

the appointment of overseers and for placing the parish or part in the same position as other parishes in the borough or district, and

(b) as respects any parish or part which remains rural, provision shall be made for the constitution of a new parish council for the same, or for the annexation of the parish or part to some other parish or parishes, or otherwise for the government of the parish or part, and

(c) provision shall also where necessary be made for the adjustment of any property, debts, and liabilities affected by the said creation, constitution, or extension.

(2.) The provision aforesaid shall be made—

(a.) Where a new borough is created, by a scheme under section two hundred and thirteen of the Municipal Corporations Act, 1882 ; 45 & 46 Vict. c. 50.

(b.) Where any other new urban district is constituted, by an order of the county council under section fifty-seven of the Local Government Act, 1888 ; 51 & 52 Vict. c. 41.

(c.) Where the area of an urban district is extended, by an order of the Local Government Board under section fifty-four, or of the county council under section fifty-seven, as the case may be, of the Local Government Act, 1888.

(3.) Where the area of an urban district is diminished this section shall apply with the necessary modifications (*h*).

Power to change name of district or parish.

55.—(1.) Where a parish is divided or united or grouped with another parish by an order in pursuance of this Act each new parish or group so formed shall bear such name as the order directs.

(2.) Where a parish is divided by this Act, each parish so formed shall bear such name as the county council direct.

(3.) Any district council may, with the sanction of the county council, change their name and the name of their district.

(4.) Every change of name made in pursuance of this section shall be published in such manner as the authority authorising the change may direct, and shall be notified to the Local Government Board.

(*h*) This section must be noted in cases of the formation of part of a rural district into an urban district, or the extension of an urban district by an order of the county council, under s. 57 of the Act of 1888, *ante*, p. 111. It must be seen that each portion of the area affected is included in a properly formed parish, new parishes being created where necessary, and that any portion of the area remaining rural is placed under the jurisdiction of a new, or added to the area of an existing parish council. Provision must be made for the election of representatives upon such parish councils, and the election orders of the Local Government Board will generally require to be applied, with modifications.

Sect. 55 (5).

(5.) Any such change of name shall not affect any rights or obligations of any parish, district, council, authority, or person, or render defective any legal proceedings, and any legal proceedings may be continued or commenced as if there were no change of name.

Committees of parish or district councils.

56.—(1.) A parish or district council may appoint committees, consisting either wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the council, and the acts of every such committee shall be submitted to the council for their approval.

Provided that where a committee is appointed by any district council for any of the purposes of the Public Health Acts or Highway Acts, the council may authorise the committee to institute any proceeding or do any act which the council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract.

(2.) Where a parish council have any powers and duties which are to be exercised in a part only of the parish, or in relation to a recreation ground, building, or property held for the benefit of a part of a parish, and the part has a defined boundary, the parish council shall, if required by a parish meeting held for that part, appoint annually to exercise such powers and duties a committee consisting partly of members of the council and partly of other persons representing the said part of the parish.

(3.) With respect to committees of parish and district councils the provisions in the First Schedule to this Act shall have effect.

(4.) This section shall not apply to the council of a borough.

Joint committees.

57.—(1.) A parish or district council may concur with any other parish or district council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district.

(2.) Provided that a council shall not delegate to any such committee any power to borrow money or make any rate.

(3.) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days after the next annual meeting of any of the councils who appointed it.

(4.) The costs of a joint committee under this section shall be defrayed by the councils by whom it is appointed in such

proportions as they may agree upon, or as may be determined in case of difference by the county council. Sect. 57 (4).

(5.) Where a parish council can under this Act be required to appoint a committee consisting partly of members of the council and partly of other persons (*i*), that requirement may also be made in the case of a joint committee, and shall be duly complied with by the parish councils concerned at the time of the appointment of such committee.

58. *Audit of accounts of district and parish councils and inspection.*]

59. (*k*) *Supplemental provisions as to district councils.* 38 & 39 *Vict. c.* 55.]

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(5.) If any district council, other than a borough council, become unable to act, whether from failure to elect or otherwise, the county council of the county in which the district is situate may order elections to be held and may appoint persons to form the district council until the newly elected members come into office (*l*).

* * * * *

Miscellaneous.

60.—(1.) The council of each county may, from time to time, by order, fix or alter the number of guardians or rural district councillors to be elected for each parish within their county, and for those purposes may exercise powers of adding parishes to each other and dividing parishes into wards, similar to those which by the Acts relating to the relief of the poor are, for the purpose of the election of guardians, vested in the Local Government Board (*m*). Supplemental provisions as to guardians.

(*i*) See s. 56 (2), *supra*.

(*k*) The earlier clauses of this section relate to the proceedings of district councils (other than councils of boroughs) and of boards of guardians. Subsection (6) contains a saving for the powers of the Secretary of State as to Aldershot, under 20 & 21 Vict. c. 22.

(*l*) Compare the similar powers as to parish councils under s. 47 (5), *ante*, p. 636.

(*m*) The power to fix and alter the number of guardians formerly belonged to the Local Government Board exclusively, under 4 & 5 Will. 4, c. 76, s. 38, and 7 & 8 Vict. c. 101, s. 18. The same body derived their power of adding parishes to each other from 31 & 32 Vict. c. 122, s. 6. That section provides that the Local Government Board may by order add any parish in a union, the population of which, according to the last census, does not exceed 300, and the annual rateable value of which does not exceed the average rateable value of the parishes in the same union, according to the valuation lists in force for the time being, to some adjoining parish in the same union for the purpose of the election of guardians. By 39 & 40 Vict. c. 61, s. 12, the Local Government Board may by their order divide any parish into wards for the election of guardians, and determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward is, for the purposes of such election, to be deemed a separate parish except so far as the board may otherwise order.

These powers are conferred by the text on county councils, or in the cases mentioned in sub-s. (3), on their joint committees.

Sect. 60 (2).

(2.) The council of each county may for the purpose of regulating the retirement of guardians or rural district councillors, in cases where they retire by thirds, and in order that as nearly as may be one third of the persons elected as guardians for the union, and one third of the persons elected as rural district councillors for the district, shall retire in each year, direct in which year or years of each triennial period the guardians or district councillors for each parish, ward, or other area in the union or rural district shall retire (*n*).

(3.) Where a poor law union is situate in more than one county, the power under this section of fixing or altering the number of guardians or rural district councillors, and of regulating the retirement of guardians and of district councillors, shall be exercised by a joint committee of the councils of the counties concerned, but if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee.

Provided that if any order under this subsection is, within six weeks after the making thereof, objected to by any of the county councils concerned, or by any committee of any of those councils authorised in that behalf, it shall be of no effect until confirmed by the Local Government Board (*o*).

(4.) Where under any local and personal Act guardians of a poor law union are elected for districts, whether called by that name

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(*n*) Guardians and rural district councillors retire by thirds unless an order has been made for their simultaneous retirement under s. 20, sub-s. (6), *ante*, p. 618. As each parish, ward, or group of united parishes has not three guardians or councillors, but some may have more and others less than that number, it is necessary to provide for the years in which the guardians or councillors of each parish will retire. Thus, in a parish having only one guardian, the election of a guardian can take place only once in three years, though in a parish with three there may be one retirement every year.

(*o*) Although the area of a poor law union may be altered under s. 36, sub-s. (6), *ante*, p. 629, the general scheme of the Act is to leave the area of the union untouched even when it extends into two counties. In that case the powers of fixing and altering the number of guardians and rural district councillors and of regulating the retirement of guardians and rural district councillors are exerciseable by the county councils concerned by means of a joint committee to act for the entire union. It is to be observed that the power of dividing a parish into wards is not given to the joint committee; that power apparently rests with the council of the county in which the parish is situate; but the joint committee will provide for the simultaneous retirement of guardians and rural district councillors under s. 20, sub-s. (6), *ante*, p. 618, and 24, sub-s. (4), *ante*, p. 620.

The number of members appointed by each county council to serve on the joint committee is apparently to be fixed by agreement. See further as to joint committees, s. 81 of the Act of 1888, *ante*. p. 155.

The proviso gives in effect an appeal to the Local Government Board at the instance of a dissenting council.

or not, the provisions of this Act with respect to the election of guardians shall apply as if each of the districts were a parish (*p*).

(5.) The board of guardians of a union elected in pursuance of this Act shall, save as otherwise provided by an order of the Local Government Board, made on the application of those guardians, have the same powers and duties under any local and personal Act as the existing board of guardians.

(6.) Nothing in this Act shall alter the constitution of the corporation of the guardians of the poor within the city of Oxford, or the election or qualification of the members thereof, except those members who are elected by the ratepayers of parishes.

61. *Place of meeting of parish or district council or board of guardians* (*q*).]

62. *Permissive transfer to urban district council of powers of other authorities.*]

Provisions as to county council acquiring powers of district council.

63.—(1.) Where the powers of a district council are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect:—

(a.) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the Local Government Board:

(b.) The expenses incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses:

(c.) The county council for the purpose of the powers transferred may on behalf of the district council borrow subject to the like conditions, in the like manner, and on the security of the like fund or rate, as the district council might have borrowed for the purpose of those powers:

(d.) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan with the interest thereon shall be paid by the district council in like manner, and the charge shall have

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(*p*) In a few unions and parishes guardians, or as they sometimes called, governors, of the poor are under local Acts. Where the areas for which separate guardians are elected are not parishes, they are to be deemed parishes so that the county council have the same powers for the purposes of the election of guardians for such areas as if they were parishes.

(*q*) Section 61 prohibits the use of licensed premises for meetings of parish and district authorities, and s. 62 enables an urban district council to transfer to themselves the powers, duties, and liabilities of any authority under the adoptive Acts within their district.

Sect. 63 (1).

the like effect, as if the loan were lawfully raised and charged on that fund or rate by the district council:

(e.) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers.

(f.) The county council may by order vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities so vested shall be deemed to have been acquired or incurred by the district council for the purpose of those powers(*r*).

(2.) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject-matter of the complaint affects any other county the complaint shall be referred to a joint committee of the councils of the counties concerned, and any question arising as to the constitution of such joint committee shall be determined by the Local Government Board, and if any members of the joint committee are not appointed, the members who are actually appointed shall act as the joint committee(*s*).

(*r*) This sub-section will apply where a county council has resolved, upon the complaint of a parish council of the default of a district council that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council. See s. 16, and s. 26, sub-s. (4), *ante*, pp. 612, 623. It does not appear that under these sections the powers of an urban district council can be transferred to a county council.

As to the defraying of the expenses of a rural district council, see ss. 229 *et seq.* of the Public Health Act, 1875, and s. 29 of this Act, *ante*, p. 625. As to their borrowing powers, see ss. 233 *et seq.* of the Public Health Act, 1875. The county council may borrow under the provisions in the text, for any purpose for which the defaulting district council might have borrowed; the loan will be secured on the fund or rate which the district council might have charged, and will be repayable by the district council. Where the default is in respect of a matter to which s. 26 (4) of this Act relates, the provisions of s. 29, *ante*, as to highway expenses must be borne in mind. Clause (f) enables the county council to hand over any property acquired for the purposes of the exercise of the powers of the district council by the county council, and to put the district council in the same position as regards powers, duties, debts, and liabilities relating to the subject matter of the complaint, as if the powers of the district council had been exercised by that council in the first instance, and no complaint had been made.

(*s*) Where a complaint is referred to a joint committee of county councils under this sub-section, it appears that that joint committee will have power to determine whether or not any action is to be taken in the matter of the complaint, and whether if action is to be taken it is to be taken by the method of taking over the powers of the defaulting district council, or by the method of compelling that council to perform the duty in respect of which the complaint is made, see note to s. 16, *ante*, p. 612.

The body to take action in either of these ways will be, it is submitted, the joint committee of the county councils, and not the county council to whom the complaint was originally made.

64. A county council may employ a district council as their agents in the transaction of any administrative business on matters arising in, or affecting the interests of, its own district (*t*). Power to act through district council.

65. *Saving for harbour powers.*]

66. *Saving for elementary schools* (*u*).]

67. Where any powers and duties are transferred by this Act from one authority to another authority— Transfer of property and debts and liabilities.

(1.) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same; and

(2.) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act; and

(3.) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed.

68. (*x*)—(1.) Where any adjustment is required for the purpose of this Act, or of any order, or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property, income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties to the agreement. Adjustment of property and liabilities.

(2.) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities

(*t*) See the enumeration of the "administrative business" in s. 3 of the Act of 1888, *ante*, p. 5, but that enumeration does not exhaust the administrative business of a county council.

(*u*) Sections 65 and 66 contain savings for harbour powers, and for the trusteeship, management, or control of elementary schools. See the definition of "elementary school" in s. 75, *post*.

(*x*) As to adjustment, see also s. 62 of the Act of 1888, *ante*, p. 119. A county council may provide for any adjustment which becomes necessary in consequence of an order under s. 57 of that Act by the order itself (see s. 59 (4) (c), *ante*, p. 116); but they may leave the question of adjustment to be settled by the authorities concerned, under s. 62, or if the order is made under this Act, under the provision in the text. As to what matters require adjustment in consequence of such an order, see *Re Llanwonno School Board and Ystradyfodwg School Board*, Times, May 20th, 1898; *Re Rochdale Union and Haslingden Union*, Times, May 21st, 1898.

Sect. 68 (2). so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board: Provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board.

(3.) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided.

52 & 53 Vict. c. 49.

(4.) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.

(5.) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Power to deal with matters arising out of alteration of boundaries.

69. Where an alteration of any area is made by this Act, an order for any of the matters mentioned in section fifty-nine of the Local Government Act, 1888, may, if it appears to the county council desirable, be made by the county council, or, in the case of an area situate in more than one county, by a joint committee of county councils, but nothing in this section shall empower a county council or joint committee to alter the boundaries of a county (*y*).

(*y*) See s. 59 of the Act of 1888, *ante*, p. 114. It was held in *R.* v. *Durham County Council*, L. G. Chronicle, 1897, p. 70, that where a parish, having a burial board, had been divided by the operation of ss. 1 (3) and 36 (2) of this Act, *ante*, this section gives the county council power to make an order altering the Burial Acts area.

The alteration of the boundaries of a county can be effected by means of

Sect. 70 (1).

Summary proceeding for determination of questions as to transfer of powers.

70.—(1.) If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to any parish council, parish meeting, or district council, or any property is or is not vested in the parish council, or in the chairman and overseers of a rural parish, or in a district council, that question, without prejudice to any other mode of trying it, may, on the application of the council, meeting, or other local authority concerned, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

(2.) If any question arises or is about to arise under this Act, as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891.

(3.) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section.

Supplemental provisions as to county council orders.

71. A copy of every order made by a county council or joint committee in pursuance of this Act shall be sent to the Local Government Board, and, if it alters any local area or name, also to the Board of Agriculture.

Provisions as to local inquiries.

72.—(1.) The expenses incurred by the Local Government Board in respect of inquiries or other proceedings under this Act shall be paid by such authorities and persons and out of such funds and rates as the Board may by order direct, and the Board may certify the amount of the expenses so incurred, and any sum so certified and directed by the Board to be paid by any authority or person shall be a debt from that authority or person to the Crown.

(2.) Such expenses may include the salary of any inspector or officer of the Board engaged in the inquiry or proceeding, not exceeding three guineas a day.

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a provisional order of the Local Government Board, under s. 54 of the Act of 1888, *ante*, p. 108. A county council may apply to the board for such an order (s. 36, sub-s. (5), *ante*, p. 629).

Sect. 72 (3).

(3.) The Local Government Board and their inspectors shall have for the purposes of an inquiry in pursuance of this Act the same powers as they respectively have for the purpose of an inquiry under the Public Health Act, 1875.

(4.) Where a county council hold a local inquiry under this Act or under the Local Government Act, 1888, on the application of the council of a parish or district, or of any inhabitants of a parish or district, the expenses incurred by the county council in relation to the inquiry (including the expenses of any committee or person authorised by the county council) shall be paid by the council of that parish or district, or, in the case of a parish which has not a parish council, by the parish meeting; but, save as aforesaid, the expenses of the county council incurred in the case of inquiries under this Act shall be paid out of the common fund.

Provision as to Sundays and bank holidays.

73. When the day on which any thing is required by or in pursuance of this Act to be done is Sunday, Christmas Day, or Good Friday, or a bank holiday, that thing shall be done on the next following day, not being one of the days above-mentioned.

74. *Provisions as to Scilly Islands.*]

Construction of Act. 51 & 52 Vict. c. 41.

75.—(1.) The definition of "parish" in section one hundred of the Local Government Act, 1888, (*z*) shall not apply to this Act, but, save as aforesaid, expressions used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

(2.) In this Act, unless the context otherwise requires—

Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

(*z*) See this section, *ante*, p. 171. It is there enacted that in the Act of 1888 "parish" "means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within and part of it without any county, borough, urban sanitary district, or other area means each such part." The application of this definition being expressly excluded, the definition of "parish" in the Interpretation Act, 1889 (52 & 53 Vict. c. 63), applies, whereby (s. 5) "parish" is defined to mean, "as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed." The part of the definition in the Act of 1888 which relates to parts of parishes would obviously be inapplicable to the present Act, having regard to its provisions as to parishes situate partly within and partly without a larger area; see ss. 1 and 36, and notes, *ante*, pp. 593, 627.

It may be mentioned that the definition of "county" in the Act of 1888, is varied (*infra*, sub-s. (2)), so as to include a "county borough," and that the definition of "district council," and "county district" in the Act of 1888, (definitions which had reference to future legislation which might establish district councils), must now be read as referring to the district councils, which are established by this Act, and to the districts of such councils. See s. 21 *ante*, p. 619.

Sect. 75 (2).

The expression "parochial elector," when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

The expression "election" includes both the nomination and the poll.

The expression "trustees" includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

The expression "ecclesiastical charity" includes a charity, the endowment whereof is held for some one or more of the following purposes :—

(a) for any spiritual purpose which is a legal purpose ; or

(b) for the benefit of any spiritual person or ecclesiastical officer as such ; or

(c) for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination ; or

(d) for the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein ; or

(e) otherwise for the benefit of any particular church or denomination, or of any members thereof as such (*a*).

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act ; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.

(*a*) Where a charity consisted of an annuity to be paid annually "on St. Thomas's Day" to the churchwardens of a parish, and to be laid out by them in the purchase of clothing for six old and poor widows of the parish, with a preference to those who were most constant in their attendance on "the public services of the church," it was held by NORTH, J., affirming the decision of the Charity Commissioners, that the charity was not an ecclesiastical charity, as being for the benefit of members of the Church of England, and that the parish council had power to appoint trustees in place of the churchwardens, under s. 14 (2), *ante*, p. 611. *In re Ross's Charity*, [1897] 2 Ch. 397 ; 66 L. J. Ch. 662 ; 77 L. T. (N.S.) 89 ; 46 W. R. 27 ; 61 J. P. 742 ; *Re Perry Almshouses Charity*, W. N. 1898, p. 14.

Sect. 75 (2).

The expression "affairs of the church" shall include the distribution of offertories or other collections made in any church.

The expression "parochial charity" means a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.

The expression "vestry" in relation to a parish means the inhabitants of the parish whether in vestry assembled or not, and includes any select vestry either by statute or at common law.

The expression "rateable value" means the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate.

The expression "county" includes a county borough, and the expression "county council" includes the council of a county borough.

33 & 34 Vict. c. 75.

The expression "elementary school" means an elementary school within the meaning of the Elementary Education Act, 1870.

The expression "local and personal Act" includes a Provisional Order confirmed by an Act and the Act confirming the Order.

The expression "prescribed" means prescribed by order of the Local Government Board.

Extent of Act.

76. This Act shall not extend to Scotland or Ireland.

Short title.

77. This Act may be cited as the Local Government Act, 1894.

PART V.

Transitory Provisions (*b*).

First elections to parish councils.

78.—(1.) The overseers of each rural parish shall convene the first parish meeting of the parish at the time fixed by or under this Act for the first election of parish councillors, whether there is or is not a parish council for the parish, and for this purpose the overseers of a parish shall be deemed to be the overseers of every part of the parish.

(*b*) Some of the transitory provisions have been inserted in this work for the reasons that some of them are of permanent effect (*e.g.*, the provisions of s. 81, as to existing officers, and the definition of "appointed day" in s. 84), and others are often of use as containing provisions which may easily be adapted so as to apply in cases of the constitution of new authorities by the order of a county council.

(2.) The chairman of the parish meeting at which the first parish councillors are nominated, or in his default the clerk of the guardians, shall convene the first meeting of the parish council. Sect. 78 (2).

(3.) The first parish councillors and the first chairman of a parish meeting elected under this Act shall retire on the second ordinary day of coming into office of councillors which happens after their election.

First elections of guardians and district councils.

79.—(1.) The existing boards of guardians and urban and rural sanitary authorities shall take the necessary measures for the conduct of the first elections of guardians and district councillors respectively under this Act, including any appointment of returning officers required by rules under this Act.

(2.) Where a parish is divided by this Act into two or more new parishes, then, subject to any order made by the county council, there shall be one guardian, and if it is in a rural district, one district councillor for each of such new parishes.

(3.) Of the guardians and urban and rural district councillors first elected under this Act, save as herein-after mentioned, one third as nearly as may be shall continue in office until the fifteenth day of April one thousand eight hundred and ninety-six, and shall then retire; and one third as nearly as may be shall continue in office until the fifteenth day of April one thousand eight hundred and ninety-seven, and shall then retire; and the remainder shall continue in office until the fifteenth day of April one thousand eight hundred and ninety-eight, and shall then retire.

(4.) The guardians and rural district councillors to retire respectively on the fifteenth day of April one thousand eight hundred and ninety-six and on the fifteenth day of April one thousand eight hundred and ninety-seven shall be the guardians and rural district councillors for such parishes, wards, or other areas, as may be determined by the county council for the purpose of the rotation.

(5.) Where guardians or rural district councillors retire together at the end of the triennial period, the guardians and district councillors first elected under this Act shall retire on the fifteenth day of April one thousand eight hundred and ninety-eight.

(6.) Of the first urban district councillors elected under this Act, the third who are respectively to retire on the fifteenth day of April one thousand eight hundred and ninety-six and one thousand eight hundred and ninety-seven shall be determined according to their place on the poll at the election, those that were lowest on the poll retiring first. If there was no poll, or if a question arises in consequence of an equality of votes between two or more councillors, the matter shall be determined by ballot conducted under the direction of the council.

Sect. 79 (7). (7.) In the case of an urban district divided into wards, the foregoing provisions with respect to retirement shall apply separately to each ward.

(8.) Upon the day on which the first guardians and urban or rural district councillors elected under this Act come into office, the persons who are then members of boards of guardians, and urban and rural sanitary authorities, shall cease to hold office, but until that day the persons who are at the passing of this Act guardians and members of urban sanitary authorities (for urban districts not being boroughs) and of highway boards shall continue in office notwithstanding any want of qualification, as if the term of office for which they were elected expired on that day, and, except for the purpose of filling casual vacancies or electing additional guardians, no further elections shall be held.

(9.) The first meeting of each district council elected under this Act shall be convened by the returning officer.

(10.) The foregoing provisions shall apply to the existing members and first members elected under this Act of the local board of Woolwich and of any vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same, and to the existing and first auditors elected under those Acts in like manner as if they were members of urban sanitary authorities or urban district councillors, as the case may require, except that the date of the annual election shall be substituted for the fifteenth day of April.

(11.) The overseers of any parish divided by this Act shall, until the first appointment of overseers next after the appointed day, continue in office as if they were overseers of each part of the said parish, which by reason of such division becomes a separate parish.

Power of county council to remove difficulties.

80.—(1.) * * * * * (*c*)

(2.) The Local Government Board shall make regulations for expediting and simplifying the procedure under section fifty-seven of the Local Government Act, 1888, in all cases in the year one thousand eight hundred and ninety-four, for the purpose of bringing this Act into immediate operation, and such regulations may dispense with the final approval of an order by the county council in cases where the prescribed notice of the proposed order has been given before it is made by the county council (*d*).

(*c*) This transitory provision has now been superseded by the Local Government (Elections) Act, 1896, *post*.

(*d*) An order under this sub-section was made on March 22nd, 1894, and was in force during the remainder of the year 1894; it was set out in the second edition of Macmorran and Dill's "Local Government Act, 1894," at p. 159. The order of September 14th, 1889 (*post*), came again into force on January 1st, 1895.

81.—(1.) Where the powers and duties of any authority other than justices are transferred by this Act to any parish or district council, the officers of that authority shall become the officers of that council, and for the purposes of this section the body appointing a surveyor of highways shall be deemed to be a highway authority and any paid surveyor to be an officer of that body. Sect. 81 (1). Existing officers.

(2.) Where there is in a rural parish an existing vestry clerk appointed under the Vestries Act, 1850, he shall become the clerk of the parish council, and if there is also an assistant overseer in the parish, then, notwithstanding the foregoing provisions of this Act, that assistant overseer shall not, while such vestry clerk holds office, be the clerk of the parish council. 13 & 14 Vict. c. 57.

(3.) Any existing assistant overseer in a parish for which a parish council is elected shall, unless appointed by a board of guardians, become an officer of the parish council.

(4.) Every such officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

(5) Where a parish or rural sanitary district is divided by this Act, any officer for the parish or district so divided shall hold his office as such officer for each parish or district formed by the division, and his salary shall be borne by the respective parishes or districts in proportion to their rateable value at the commencement of the local financial year next after the passing of this Act.

(6.) So much of any enactment as authorises the appointment of assistant overseers by a board of guardians shall be repealed as from the appointed day.

(7.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the council, and any expenses incurred by a board of guardians in pursuance of this section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to payment of the salary of the offices affected. 51 & 52 Vict. c. 41.

82.—(1.) Where before the appointed day the highway expenses were charged on a particular parish or other area and not on a Provision as to highways.

Sect. 82 (1). district, the district council may determine that the highways in that parish or area shall be placed in proper repair before the expenses of repairing the same become a charge upon the district, and, failing such highways being placed in proper repair to the satisfaction of the district council, the district council may themselves place the highways in proper repair, and the expense incurred by them of placing those highways in proper repair shall be a separate charge on the parish or area, and any question which arises as to whether any such expenses are properly a separate charge on the parish or area shall be determined by the county council.

(2.) Where in pursuance of an order of a county council a parish continues to maintain its own highways after the appointed day, the highway expenses shall not be deemed to be expenses of the parish council or of the parish meeting within the meaning of this Act.

Duty of county council to bring Act into operation.

83. It shall be the duty of every county council to exercise all such of their powers as may be requisite for bringing this Act into full operation within their county as soon as may be after the passing thereof, and a county council may delegate their powers under this Act to a committee.

Appointed day.

84.—(1.) The first elections under this Act shall be held on the eighth day of November next after the passing of this Act, or such later date or dates in the year one thousand eight hundred and ninety-four as the Local Government Board may fix.

(2.) The persons elected shall come into office on the second Thursday next after their election, or such other day not more than seven days earlier or later as may be fixed by or in pursuance of the rules made under this Act in relation to their election.

(3.) Every division into wards or alteration of the boundaries of any parish or union or district which is to affect the first election shall, if it affects the parishes or parts for which the registers of parochial electors will be made, be made so far as practicable before the first day of July next after the passing of this Act, and any such division or alteration which after the appointed day may be made on application by the parish council or any parochial electors of any parish, may be made before the appointed day on application by the vestry or a like number of the ratepayers of the parish.

Provided that—

(a.) If any county council having any such division or alteration under consideration so direct, the lists of voters shall be framed in parts corresponding with such division or alteration so that the parts may serve either for the unaltered parish, union, or district, or for the same when divided or altered ; and

(b.) If the county council making such division or alteration on or after the said day and on or before the last day of August one thousand eight hundred and ninety-four so direct, the clerk of the county council shall make such adjustment of the registers of parochial electors as the division or alteration may render necessary for enabling every parochial elector to vote at the first election in the ward, union, or district in which his qualification is situate, and in that case the said division or alteration shall be observed in the case of that election. Sect. 84 (3).

(4.) Subject as in this Act mentioned, "the appointed day" shall,

(a) for the purpose of elections and of parish meetings in parishes not having a parish council, be the day or respective days fixed for the first elections under this Act, or such prior day as may be necessary for the purpose of giving notices or doing other acts preliminary to such elections; and

(b) for the purpose of the powers, duties, and liabilities of councils or other bodies elected under this Act, or other matters not specifically mentioned, be the day on which the members of such councils or other bodies first elected under this Act come into office; and

(c) for the purpose of powers, duties, and liabilities transferred to a council of a borough by this Act, be the first day of November next after the passing of this Act;

and the lists and registers of parochial electors shall be made out in such parts as may be necessary for the purpose of the first elections under this Act.

Provided that where an order of a county council postpones the operation of the section with respect to highways as respects their county or any part thereof the day on which such postponement ceases shall, as respects such county or part, be the appointed day, and the order of postponement shall make such provision as may be necessary for holding elections of highway boards during the interval before the appointed day.

85. *Current rates, etc.*]

86. *Saving for existing securities and discharge of debts.*]

87. *Saving for existing bye-laws.*]

88. *Saving for pending contracts, etc.*]

89. The Acts specified in the Second Schedule to this Act are hereby repealed as from the appointed day to the extent in the third column of that schedule mentioned, and so much of any Act, whether public general or local and personal, as is inconsistent Repeal.

Sect. 89. with this Act is also hereby repealed. Provided that where any wards of an urban district have been created, or any number of members of an urban sanitary authority fixed, by or in pursuance of any local and personal Act, such wards and number of members shall continue and be alterable in like manner as if they had been fixed by an order of the county council under this or any other Act (*e*).

SCHEDULE.

FIRST SCHEDULE (*f*).

RULES AS TO PARISH MEETINGS, PARISH COUNCILS, AND COMMITTEES.

PART ONE.

Section 2. *Rules applicable to Parish Meetings.*

(1.) * * * * * * (*g*).

(2.) Not less than seven clear days before any parish meeting, public notice thereof shall be given specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by the chairman of the parish council or other conveners of the meeting.

(3.) If the business relates to the establishment or dissolution of a parish council, or the grouping of a parish, or the adoption of any of the adoptive Acts, not less than fourteen days' notice shall be given.

(4.) A parish meeting may discuss parish affairs and pass resolutions thereon.

(5.) Every question to be decided by a parish meeting shall, in the first instance, be decided by the majority of those present and voting on the question, and the chairman shall announce his decision as to the result, and that decision shall be final, unless a poll is demanded.

(*e*) The schedule of repeals has not been inserted, as with the exception of the repeal of a part of s. 36 (1) of the Municipal Elections (Corrupt Practices) Act, 1884 (*ante*, p. 370), the repeals do not affect the subject-matter of this work.

This Act does not give power to a county council to create wards or fix the number of councillors in an urban district, but the meaning of the proviso in the text seems to be that where these matters are provided for by or in pursuance of a local and personal Act the county council shall have the same power of altering them from time to time as that body has in the case of rural districts under this Act (s. 60, sub-s. (1), *ante*, p. 643), and in urban districts under s. 57 of the Act of 1888 (*ante*, p. 111).

(*f*) The schedules relating to the procedure of parish meetings, parish councils, and their committees have been retained, since it is often necessary for county councils, when considering representations by, or making loans to, parish councils, or orders to cure defective elections, or otherwise dealing with parish councils, to satisfy themselves as to the observance of the rules laid down by the Act.

(*g*) Rule (1), as to the annual assembly of the parish meeting, has been repealed by the Local Government Act, 1897 (60 Vict. c. 1), which enacts (s. 2) that that annual assembly "shall be held on some day between the first day of March and the first day of April, both inclusive, in each year."

(6.) A poll may be demanded at any time before the conclusion of a parish meeting. Schedule 1.

(7.) A poll may be demanded by any one parochial elector in the case of a resolution respecting any of the following matters, namely :—

(a.) Any application, representation, or complaint to a county council or district council ;

(b.) The appointment of a chairman for the year or of a committee, or the delegation of any powers or duties to a committee, or the approval of the acts of a committee ;

(c.) The appointment of an overseer, the appointment or revocation of the appointment or dismissal of an assistant overseer or a parish officer ;

(d.) The appointment of trustees or beneficiaries of a charity ;

(e.) The adoption of any of the adoptive Acts ;

(f.) The formation or dissolution of a school board ;

(g.) The consent or refusal of consent to any act, matter, or thing which cannot by law be done without that consent ;

(h.) The incurring of any expense or liability ;

(i.) The place and time for the assembly of the parish meeting ;

(k.) Any other prescribed matter ;

but, save as aforesaid, a poll shall not be taken unless either the chairman of the meeting assents, or the poll is demanded by parochial electors present at the meeting, not being less than five in number or one third of those present, whichever number is least.

(8.) In case of an equal division of votes at a parish meeting the chairman shall have a second or casting vote.

(9.) Where a parish meeting is held for the election of parish councillors, opportunity shall be given at the meeting for putting questions to such of the candidates as are present, and receiving explanations from them, and any candidate shall be entitled to attend the meeting and speak thereat, but, unless he is a parochial elector, not to vote.

(10.) If the chairman of the parish meeting is absent from or unwilling or unable to take the chair at any assembly of the parish meeting, the meeting may appoint a person to take the chair, and that person shall have, for the purpose of that meeting, the powers and authority of the chairman.

(11.) Any notice required to be given to or served on a parish meeting may be given to or served on the chairman of the parish meeting.

PART TWO.

Rules applicable to Parish Councils. Section 3.

(1.) Every parish councillor shall, at the first meeting after his election, or if the council at the first meeting so permit, then at a later meeting fixed by the council, sign, in the presence of some member of the council, a declaration that he accepts the office, and if he does not sign such a declaration his office shall be void.

(2.) If any casual vacancy arise in the council, the council shall forthwith be convened for filling the vacancy.

(3.) The first business at the annual meeting shall be to elect a chairman and to appoint the overseers.

(4.) The chairman may at any time convene a meeting of the parish council. If the chairman refuses to convene a meeting of the council after a requisition for that purpose signed by two members of the council has been presented to him, any two members of the council may forthwith, on that refusal, convene a meeting. If the chairman (without so refusing) does

Schedule 1.

not within seven days after such presentation, convene a meeting, any two members of the council may, on the expiration of those seven days, convene a meeting.

(5.) Three clear days at least before any meeting of a parish council, notice thereof specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by or on behalf of the chairman of the parish council or persons convening the meeting, shall be given to every member of the parish council, and in case of the annual meeting notice specifying the like particulars shall be given to every member of the parish council immediately after his election.

(6.) Any notice required by law to be given to the chairman or any other member of the parish council may be left at or sent by post to the usual place of abode of such chairman or member.

(7.) No business shall be transacted at any meeting of a parish council unless at least one third of the full number of members are present thereat, subject to this qualification, that in no case shall the quorum be less than three.

(8.) The names of the members present at any meeting of the parish council, as well as of those voting on each question on which a division is taken, shall be recorded, so as to show whether each vote given was for or against the question.

(9.) Every question at a meeting of a parish council shall be decided by a majority of votes of the members present and voting on that question.

(10.) In case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

(11.) The parish council may, if they think fit, appoint one of their number to be vice-chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman.

(12.) The proceedings of a parish council shall not be invalidated by any vacancy among their members, or by any defect in the election or qualification of any members thereof.

(13.) A parish council shall hold not less than four meetings in each year, of which one shall be the annual meeting, and every such meeting shall be open to the public unless the council otherwise direct.

(14.) Every cheque or other order for payment of money by a parish council shall be signed by two members of the council.

(15.) Any notice required to be given to or served on a parish council may be given to or served on the clerk to the parish council.

(16.) The parish council may appear before any court or in any legal proceeding by their clerk or by any officer or member authorised generally or in respect of any special proceeding by resolution of the council, and their clerk or any member or officer shall, if so authorised, be at liberty to institute and carry on any proceeding which the parish council are authorised to institute and carry on.

Part Three.

Section 2, 3.

General.

(1.) Minutes of the proceedings of every parish council and parish meeting shall be kept in a book provided for that purpose.

(2.) A minute of proceedings at a meeting of a parish council, or of a committee of a parish or district council, or at a parish meeting, signed at the same or the next ensuing meeting by a person describing himself as or

appearing to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(3.) Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

(4.) Any instrument purporting to be executed under the hands or under the hands and seals of the chairman and of two other members of a parish council or of a parish meeting shall, until the contrary is proved, be deemed to have been duly so executed.

(5.) Subject to the provisions of this Act, a parish council may make, vary, and revoke standing orders for the regulation of their proceedings and business, and of the proceedings and business at parish meetings for a rural parish having a parish council.

(6.) Where there is no council for a rural parish, the parish meeting may, subject to the provisions of this Act, regulate their own proceedings and business.

PART FOUR.

Proceedings of Committees of Parish or District Councils. Section 56.

(1.) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority, shall be such as may be determined by regulations of the council or councils appointing the committee.

(2.) Subject to such regulations, the quorum, proceedings, and place of meeting, whether within or without the parish or district, shall be such as the committee direct, and the chairman at any meeting of the committee shall have a second or casting vote.

SECOND SCHEDULE.

ENACTMENTS REPEALED (*h*).

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(*h*) See note to s. 89, *ante*, p. 658.

MUSIC AND DANCING LICENCES (MIDDLESEX) ACT, 1894.

(57 & 58 Vict. Cap. 15) (*i*).

An Act to amend the Law as regards Music and Dancing Licences in Middlesex. [3rd July 1894.]

* * * * *

Short title.

1. This Act may be cited for all purposes as the Music and Dancing Licences (Middlesex) Act, 1894.

Music and dancing licences.

2. For the regulation of places ordinarily used (*k*) for public dancing or music, or other public entertainment of the like kind, the

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(*i*) The Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2, provided that any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind in the cities of London and Westminster, or within 20 miles thereof without a licence from quarter sessions should be deemed a disorderly house or place. Under the Local Government Act, 1888, s. 3, *ante*, p. 7, the powers and duties of the quarter sessions as to licensing for music and dancing were transferred to the county councils in area within the operation of the Act. The Act is now repealed as far as Middlesex is concerned; see s. 2 (12), *post*, and the provisions in the text substituted. The Act may be usefully compared with s. 50 of the Public Health Act, 1890. See Lumley's Public Health, p. 594.

(*k*) The words of 25 Geo. 2, c. 26, s. 2, were "*kept* for public dancing, etc." Here the words are "ordinarily used" and in sub-s. (1) "kept or used." These words probably mean that there must be a habitual keeping or use of the room for public dancing, etc., though the reference in sub-s. (1) to a licence for the purpose of a charitable entertainment seems to indicate that a licence is necessary even for a single entertainment; and see sub-s. (11), *infra*.

The following cases decided under the Act of 1751 may be usefully referred to as showing what amounted to keeping a house for public dancing under that Act.

The statute extends to houses kept for the purpose of private dancing, not to public places only. *Clarke* v. *Searle*, 1 Esp. 25.

A room in which musical performances are regularly exhibited, though it is not kept or used solely for that purpose, is within the statute, and requires a licence. *Bellis* v. *Beale*, 2 Esp. 592.

A room kept by a dancing master for the instruction of his scholars and subscribers, and to which persons are not indiscriminately admitted, is not within the statute. *Bellis* v. *Burghall*, 2 Esp. 722.

To subject a party to the penalties of the statute for keeping a house for illegal dancing and music, it is not necessary that the party who kept the house should take money for admission. *Archer* v. *Willingrice*, 4 Esp. 186.

A temporary use of a room in a public house for the purpose of dancing on a particular festival or occasion does not subject the owner to the penalty of the statute. *Shutt* v. *Lewis*, 5 Esp. 128.

The statute extends to licensed taverns and hotels, and it is no defence that the company frequenting the performance was respectable or that the admission money was not received for the benefit of the keeper of the house. *Green* v. *Bothroyd*, 3 C. & P. 471.

A room used for public music or dancing is within the statute, although it is not exclusively used for those purposes, and although no money is taken for admission; but the mere accidental or occasional use of a room for either or both of these purposes will not be within the statute. *Gregory* v. *Jupp*, 6 C. & P. 271; 1 M. & Rob. 313.

In an action to recover the penalty for keeping an unlicensed house for public dancing, it appeared that music, dancing, etc., had occasionally taken

following provisions shall have effect in the administrative county of Middlesex; namely, Sect. 2.

(1.) After the thirty-first day of December one thousand eight hundred and ninety-four, a house, room, garden, or other

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place at the defendant's house (a public house), and that no money was taken by him for admission, but the rooms were let to persons who sold tickets and received money for admission at the door; but there was no direct evidence that the defendant knew of this practice:—*Held*, that there was evidence to go to the jury of a keeping of the house by the defendant for the purposes mentioned in the statute, and that the judge was wrong in directing a non-suit. *Marks* v. *Benjamin*, 3 M. & W. 565; 3 Jur. 1194.

No action can be maintained on an agreement to exhibit entertainment for gain in a place where, by the above statute, a licence cannot be obtained. *Levy* v. *Yates*, 8 A. & E. 129.

A room within the limits of the Act kept for public dancing or music without a licence is a disorderly house under 25 Geo. 2, c. 36, s. 2, though no disorderly or improper conduct is allowed in the said room. The preamble does not confine this section to "places of entertainment for the lower sort of people," where robberies are likely to ensue. The defendant when indicted for keeping such house must prove his licence. *R.* v. *Wolfe and Others*, 13 J. P. 428.

A. kept a room which was used as a supper room and place of general refreshment, there being at the end of it a raised platform, on which stood a piano, and where songs were constantly sung. Programmes of the performance were laid about in different parts of the room. The company was respectable, and no money was paid for admission, nor any extra charge made for the articles consumed there. An action having been brought for a penalty under 25 Geo, 2., c. 36, the judge directed the jury to say whether the room was used for the purpose of supplying refreshments in the manner of an hotel, the music and singing being incidental merely, or whether it was used principally for musical performances; and ultimately he directed them to consider whether the room was used for both purposes, in which latter case the informer would be entitled to the verdict. The jury found that the room was used for the purpose of an hotel, and found a verdict for A.:—*Held*, that although the verdict might be against the evidence, there was no misdirection. *Hall* v. *Green*, 2 C. L. R. 427; 23 L. J. M. C. 15; 9 Exch. 247.

Under similar words in a local Act, it was held that to bring a case within the statute the music and dancing must be an essential part of the entertainment, and not merely accessories to it. It is not necessary that the dancing should be by the public. *Quaglieni* v. *Matthews*, 6 B. & S. 474; 34 L. J. M. C. 116; 11 Jur. (N.S.) 636; 29 J. P. 439.

Where a room above the bar of a public-house was used for music and dancing, the keeper of the house was held liable not for having a licence, though the persons using the room paid nothing to him for it. *Frailing* v. *Messenger*, 16 L. T. (N.S.) 497; 31 J. P. 423.

Under the statute the justices have a discretion to grant a licence for music only; and the keeper of a house with a music licence only is liable to a penalty for keeping a house without a licence if he permits public dancing in the house. *Brown* v. *Nugent*, L. R. 6 Q. B. 693; 7 Q. B. 588; 40 L. J. M. C. 166; 26 L. T. (N.S.) 880; 20 W. R. 89; 36 J. P. 22.

C. was lessee of a theatre duly licensed under 6 & 7 Vict. c. 68; he also held a justices' licence under 25 Geo. 2, c. 36, and on Ash Wednesday he gave a concert in the theatre, to which the public were admitted for money. Both his licences contained a regulation that no entertainment should be given on Ash Wednesday. It was held that he did not commit an offence against the 25 Geo. 2, c. 36, as the concert was not a public entertainment *ejusdem generis* with public dancing, and, at all events, the room was not habitually kept for such entertainment. *Syres* v. *Conquest*, 28 L. T. (N.S.) 402; 21 W. R. 524; 37 J. P. 342.

Under similar provisions in a local Act it was held that the justices had an implied right to grant the licence for one year, though no period was mentioned

Sect. 2 (1).

place, whether licensed or not for the sale of wines, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind, without a licence for the purpose or purposes (*l*) for which the same respectively is to be used first obtained from the County Council of Middlesex and for the registration thereof a fee of five shillings shall be paid by the person applying therefor; provided that such fee shall in no case be payable by any applicant in respect of any licence granted for the purpose of a charitable or other like entertainment:

(2.) The County Council may at any meeting convened with fourteen days' previous notice, or at any adjournment thereof, grant licences to such persons as they think fit to keep or use houses, rooms, gardens, or places for all or any of the purposes aforesaid upon such terms and conditions, and subject to such restrictions, as they by the respective licences determine, and every licence shall be in force for one year or for such shorter period as the County Council on the grant of the licence shall determine, unless the same shall have been previously revoked as hereinafter provided (*m*):

(3.) The County Council may from time to time at any such meeting as aforesaid transfer any such licence to such person as they think fit:

(4.) Each person shall in each case give fourteen days' notice to the clerk of the County Council and to the superintendent of police of the police division in which the house, room, garden, or place is situated, of his intention to apply for any such licence, or for the transfer of any such licence:

(5.) Any house, room, garden, or place kept or used for any of the purposes aforesaid without such licence first obtained

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in the statute, and that they were entitled to refuse to renew it. *Hoffman* v *Bond*, 32 L. T. (N.S.) 775; 40 J. P. 5.

The defendant kept a skating rink, which was enclosed by a wall, and was partly roofed with canvas and partly open to the air. It was open for skating in the daytime and in the evening. In the daytime there was no music. In the evening a band played operatic and dance music while the skaters skated. The defendant had no licence. It was held that the defendant might be properly convicted of keeping a place of public entertainment of a like kind to music and dancing without a licence, and, *semble*, that he might also be convicted of keeping a place for public music without a licence. *R.* v. *Tucker*, 2 Q. B. D. 417: 46 L. J. M. C. 197; 36 L. T. (N.S.) 478; 25 W. R. 697; 41 J. P. 294.

(*l*) See *Brown* v. *Nugent*, *supra*.

(*m*) Applications for licences must be determined judicially. See *R.* v. *London County Council*, [1892] 1 Q. B. 190; 61 L. J. M. C. 75; 66 L. T. (N.S.) 168; 40 W. R. 285; 56 J. P. 8; *Royal Aquarium Society* v. *Parkinson*, [1892] 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. (N.S.) 513; 40 W. R. 450; 50 J. P. 404. And see the notes to s. 3 (v) of the Local Government Act, 1888, *ante*, pp. 7, 8.

shall be deemed a disorderly house, and the person occupying, or rated as occupier of, the same shall be liable on summary conviction to a penalty not exceeding five pounds for every day on which the same is kept or used for any of the purposes aforesaid; and it shall be lawful for any constable, being thereunto authorised by warrant under the hand of one of Her Majesty's justices of the peace for the county of Middlesex, to enter any such house, room, garden, or place so kept or used without such licence as aforesaid, and to apprehend every person who shall be found therein in order that they may be dealt with according to law (*n*).

(6.) There shall be affixed and kept up in some conspicuous place on the door or entrance of every house, room, garden, or place so kept or used and so licensed as aforesaid an inscription in large capital letters in the words following: "Licensed in pursuance of Act of Parliament for ," with the addition of words showing the purpose or purposes for which the same is licensed;

(7.) Any house, room, garden or place so kept or used, although so licensed as aforesaid, shall not be opened for any of the said purposes except on the days and between the hours stated in the licence: Provided that no such house, room, garden, or other place so kept or used shall be open for any of the purposes aforesaid after midnight and before the hour of noon; save that if on any special occasion an occasional licence of exemption shall have been granted under the twenty-ninth section of the Licensing Act, 1872, in respect of any house, room, garden, or other place licensed under this Act, no penalty shall be incurred on account of such house, room, garden or other place being kept open for any of the purposes aforesaid on such special occasion from midnight until the hour specified in such occasional licence as the hour for closing (*o*). 35 & 36 Vict c. 94.

(8.) The affixing and keeping up of such inscription as aforesaid, and the observance of the days and hours of opening and closing, shall be inserted in and made a condition of every such licence:

(9.) In case of any breach or disregard of any of the terms or conditions upon or subject to which the licence was granted the holder thereof shall be liable on summary conviction to a

(*n*) The power to enter and arrest is not given by the Public Health Act, 1890. A similar provision is to be found in 25 Geo. 2, c. 36, s. 2, but it does not appear in what way persons merely found in the house are to be "dealt with according to law."

(*o*) This sub-section substantially re-enacts the amendment of 25 Geo. 2, c. 36, s. 3, which is contained in the Public Entertainments Act, 1875 (38 & 39 Vict. c. 21).

Sect. 2 (9).

penalty not exceeding twenty pounds, and in the case of a continuing offence to a daily penalty (*i.e.*, a penalty for each day on which such offence is continued after conviction therefor) not exceeding five pounds, and such licence shall be liable to be revoked by the order of the County Council:

(10.) No notice need be given under sub-section (4) of this section when the application is for a renewal of any existing licence held by the applicant for the same premises:

(11.) The County Council may, if and as they think fit, grant to any person applying for the same a licence to keep or use any house, room, garden, or place for any purpose within the meaning of this section for any period not exceeding fourteen days which they shall specify in such licence, notwithstanding that no notice shall have been given under sub-section (4) of this section:

25 Geo. 2, c. 36. 38 & 39 Vict. c. 21.

(12.) From and after the passing of this Act, sections two and three of the Disorderly Houses Act, 1751, and the whole of the Public Entertainments Act, 1875, shall be repealed so far as relates to the administrative county of Middlesex:

(13.) Nothing in this Act shall be deemed to interfere with any other enactment respecting the prosecution of persons keeping disorderly houses:

(14.) The powers by this Act conferred upon the County Council shall be in addition to and not in derogation of any of the powers of licensing now vested in the County Council (*p*).

WILD BIRDS PROTECTION ACT, 1894.

(57 & 58 Vict. Cap. 24).

An Act to amend the Wild Birds Protection Act, 1880 (*q*).

[20th July 1894.]

* * * * *

Short title and construction. 43 & 44 Vict. c. 35.

1. This Act may for all purposes be cited as the Wild Birds Protection Act, 1894, and shall be construed as one with the Wild Birds Protection Act, 1880 (herein-after referred to as "the principal Act,"), except as herein-after provided.

(*p*) Having regard to the repeal contained in sub-s. (12), it is difficult to understand what other powers of licensing are vested in the county council.

(*q*) See the note to Local Government Act, 1888, s. 3 (xiii.), *ante*, p. 12, and the Wild Birds Protection Act, 1896, *post*, which further amends the Act of 1880, and explains the present Act.

Sect. 2.

Prohibition of taking or destroying eggs.

2. A Secretary of State may, after the passing of this Act, upon application by the county council of any administrative county by order prohibit—

(1.) The taking or destroying of wild birds eggs in any year or years in any place or places within that county; or

(2.) The taking or destroying the eggs of any specified kind of wild birds within that county or part or parts thereof, as recommended by the said county council and set forth in the said order.

(3.) The application by the county council shall specify the limits of the place or places, or otherwise, the particular species of wild birds to which it is proposed that any prohibition in the order is to apply, and shall set forth the reasons on account of which the application is made (*r*).

Order as to application of principal Act to other birds.

3. A Secretary of State may, on the representation of the council of any administrative county (*s*), order that the principal Act shall apply within that county or any part or parts thereof to any species of wild bird not included in the schedule of that Act, as if that species of wild bird were included in the schedule of that Act, and on the making of such order that Act shall apply accordingly.

Publication of order.

4.—(1.) The council of an administrative county (*s*) shall in every year give public notice of any order under this Act which is in force in any place within their county during the three weeks preceding the commencement of the period of the year during which the order operates.

(2.) Public notice under this section shall be given—

(a.) As regards each place in which an order operates, by advertising the order in two local newspapers circulating in or near that place;

(b.) By fixing notices of the order in conspicuous spots within and near each place in which the order operates; and

(c.) In such other manner as the Secretary of State may direct, or as the council may think expedient, with a view to making the order known to the public.

Penalties.

5. Any person who, after the passing of this Act, shall take or destroy, or incite any other person to take or destroy—

(a.) The eggs of any wild birds within any area specified in the order; or

(b.) The eggs of any species of wild bird named in the order, shall, on conviction before any two justices of the peace in

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(*r*) An order under this section may be limited to particular places, periods, and species of birds; the order must, it appears, follow the application in these respects. The powers of a county council under this Act are exerciscable by the council of a county borough. See 59 & 60 Vict. c. 56, s. 3, *post*.

(*s*) Including the council of a county borough. See last note.

Sect. 5.

England, Wales, or Ireland, or before the sheriff in Scotland, forfeit and pay for every egg so taken or destroyed a sum not exceeding one pound.

Expenses.

6. Any expenses incurred by the council of a county under this Act may be defrayed by that council as expenses for general county purposes within the meaning of the Local Government Act, 1888 (*t*), or so far as respects Scotland, the Local Government (Scotland) Act, 1889.

51 & 52 Vict. c. 41. 52 & 53 Vict, c. 50.

7. *Application to Scotland and Ireland.*]

SEA FISHERIES (SHELL FISH) REGULATION ACT, 1894.

(57 & 58 Vict. Cap. 26.)

An Act to extend the powers of Local Fisheries Committees with respect to Fisheries for Shell Fish. [20th July 1894.]

* * * * *

Extension of powers of local fisheries committees with respect to shell fish. 51 & 52 Vict. c. 54.

1.—(1.) The powers of a local fisheries committee to make bye-laws in pursuance of section two of the Sea Fisheries Regulation Act, 1888, shall extend to making bye-laws to be observed within their district for the regulation, protection, and development of fisheries for all or any specified kinds of shell fish, and any such bye-laws may provide, amongst other things, for

(a.) The fixing of the sizes and condition at which shell fish may not be removed from a fishery, and the mode of determining such sizes; (*x*)

(b.) The obligation to re-deposit in specified localities any shell fish the removal or possession of which is prohibited by or in pursuance of any Act of Parliament;

(c.) The protection of shell fish laid down for breeding purposes;

(d.) The protection of culch and other material for the reception of spat, that is to say, of the spawn or young of any kinds of shell fish; and

(e.) The obligation to re-deposit such culch and other material in specified localities.

(*t*) In the case of the council of a county borough, the expenses are to be defrayed out of the borough fund or borough rate. 59 & 60 Vict. c. 56, s. 3, *post.*

(*u*) This Act extends the powers of a local fisheries committee (formed under the Sea Fisheries Regulation Act, 1888, *ante*, p. 401), with respect to shell fish.

(*x*) For an instance where a bye-law under this section was upheld by the court, see *Thompson* v. *Burns*, 66 L. J. Q. B. 176; 76 L. T. (N.S.) 58; 61 J. P. 84; 14 T. L. R. 114. It was there held that the offence of removing under-sized shell fish from a fishery contrary to a bye-law made under this section is complete when the shell fish have been taken up from any part of the fishery with the intention of wantonly carrying them away.

(2.) A local fisheries committee shall have power to stock or re-stock any public fishery for shell fish, and for that purpose to incur such expenses as may be sanctioned by the Board of Trade. Sect. 1 (2).

(3.) For the purposes of this Act the expression "shell fish" shall include all kinds of molluscs and crustaceans.

2. This Act may be cited as the Sea Fisheries (Shell Fish) Regulation Act, 1894, and the Sea Fisheries Regulation Acts, 1888 and 1891, and this Act may be cited collectively as the Sea Fisheries Regulation Acts, 1888 to 1894. Short title. 51 & 52 Vict. c. 54. 54 & 55 Vict. c. 37.

DISEASES OF ANIMALS ACT, 1894.

(57 & 58 VICT. CAP. 57) (*z*).

An Act to consolidate the Contagious Diseases (Animals) Acts, 1878 to 1893. [25th August 1894.]

* * * * * * *

Central and Local Authorities.

1. The powers and duties conferred and imposed by this Act on the Board of Agriculture as regards England and Wales and Scotland, shall be executed and discharged by the Board in manner provided by the Board of Agriculture Act, 1889, and this Act (*a*). Powers of Board of Agriculture in England, Wales, and Scotland. 52 & 53 Vict. c. 30.

2. The local authorities in this Act described shall execute and enforce this Act and every order of the Board of Agriculture so far as the same are to be executed or enforced by local authorities. Local authorities to execute Act.

3. The Local authorities in England and Wales shall be— Local authorities in England and Wales. 51 & 52 Vict. c. 41.

(i) for each borough not being a borough to which section thirty-nine of the Local Government Act, 1888, applies (*b*), the borough council;

(ii) for the residue of each administrative county, the county council (*c*).

(*z*) This Act is administered in a county by the county council; see s. 3, *infra*. It has been amended by 59 & 60 Vict. c. 15, *post*.

(*a*) Under the repealed Acts the central authority was the Privy Council, but the powers of the Privy Council were transferred to the Board of Agriculture by 52 & 53 Vict. c. 30.

(*b*) These are the smaller boroughs with a population of less than 10,000 (see the section referred to, *ante*, p. 86). For the purposes of this Act the smaller boroughs will form part of the administrative county.

(*c*) See the definition of the expression "administrative county" in s. 100 of the Local Government Act, 1888, *ante*, p. 172.

Sect. 3.

Provided that the mayor and commonalty and citizens of the city of London, acting by the mayor, aldermen, and commons of that city in common council assembled, shall be the local authority for the city of London, and shall be the local authority in and for the county of London for the purpose of the provisions of this Act relating to foreign animals (*d*).

Separation of Diseased Animals and Notice to Police.

Separation of diseased animals, and notice to constable.

4.—(1.) Every person having in his possession or under his charge an animal affected with disease shall—

(a.) as far as practicable keep that animal separate from animals not so affected; and

(b.) with all practicable speed give notice of the fact of the animal being so affected to a constable of the police force for the police area wherein the animal so affected is (*e*).

(2.) The constable to whom notice is given, shall forthwith give information thereof to such person or authority as the Board of Agriculture by general order direct.

(3.) The Board may make such orders as they think fit for prescribing and regulating the notice to be given to or by any person or authority in case of any particular disease or in case of the illness of an animal, and for supplementing or varying for those purposes any of the provisions of this section.

Cattle Plague.

Cattle plague infected place.

5.—(1.) Where it appears to an inspector that cattle plague exists, or has within ten days existed, in a cow-shed, field, or other place, he shall forthwith make and sign a declaration thereof.

(2.) He shall serve a notice, signed by him, of that declaration on the occupier of that cow-shed, field, or other place.

(3.) Thereupon that cowshed, field, or other place, with all lands and buildings contiguous thereto in the same occupation, shall become and be a place infected with cattle plague, subject to the determination and declaration of the Board of Agriculture.

(4.) The inspector shall serve a like notice, signed by him, unless in the circumstances this appears to him not to be expedient, on the occupiers of all lands and buildings, any part whereof lies, in his judgment, within one mile in any direction from that cowshed, field, or other place, or on the occupiers of any of those lands and buildings.

(5.) Thereupon all the lands and buildings aforesaid, on the occupiers whereof the inspector serves such a notice, shall become

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(*d*) As to foreign animals, see ss. 24, 30, *post*.

(*e*) See the definition of "animal," "disease," "police force," "police area," in s. 59, *post*.

and be part of the place infected with cattle plague, subject to the determination and declaration of the Board. Sect. 5 (6).

(6.) The inspector shall, with all practicable speed, inform the Board and the local authority of his declaration and notices, and shall send to the Board his declaration and a copy of his secondly-mentioned notice (if any).

(7.) The Board shall forthwith on receipt of the information inquire into the correctness of the inspector's declaration.

(8.) If the Board are satisfied of the correctness of that declaration as regards the existence or past existence of cattle plague, they shall by order determine and declare accordingly, and prescribe the limits of the place infected with cattle plague.

(9.) If the Board are not satisfied of the correctness of the inspector's declaration as regards the existence or past existence of cattle plague, they shall by order determine and declare accordingly; and thereupon, as from the time specified in the order, the place comprised in the inspector's declaration and notices shall cease to be a place infected with cattle plague.

(10.) The Board may at any time, if they think fit, on any evidence satisfactory to them, by order—

(a) declare any cow-shed, field, or other place with or without any lands or buildings adjoining or near thereto, to be a place infected with cattle plague; or

(b) extend, contract, or otherwise alter the limits of a place infected with cattle plague; or

(c) declare a place infected with cattle plague or any part thereof to be free from cattle plague.

Cattle plague infected area.

6. The Board of Agriculture may at any time, if they think fit, by order—

(a) declare any area, wherein a place infected with cattle plague is situate, to be an area infected with cattle plague; or

(b) extend, contract, or otherwise alter the limits of an area infected with cattle plague; or

(c) declare an area infected with cattle plague or any part thereof to be free from cattle plague.

Slaughter by Board of Agriculture in cattle plague, and compensation out of public money.

7.—(1.) The Board of Agriculture shall (*f*) cause to be slaughtered—

(i) all animals affected with cattle plague, and

(ii) all animals being or having been in the same shed, stable, herd or flock, or in contact with an animal affected with cattle plague.

(*f*) Under this sub-section, slaughter is compulsory; under the next, it is discretionary.

Sect. 7 (2).

(2.) The Board may, if they think fit, in any case cause to be slaughtered—

(i) any animals suspected of being affected with cattle plague, or being in a place infected with cattle plague,

(ii) any animals being in such parts of an area infected with cattle plague as are not comprised in a place infected with cattle plague (but in this last-mentioned case subject to such regulations as the Treasury think fit to make).

(3.) The Board shall for animals slaughtered under this section pay compensation as follows, out of money provided by Parliament :—

(a.) Where the animal slaughtered was affected with cattle plague, the compensation shall be one half of its value immediately before it became so affected, but so that the compensation does not in any such case exceed twenty pounds; and

(b.) In every other case the compensation shall be the value of the animal immediately before it was slaughtered, but so that the compensation does not in any case exceed forty pounds.

Infected Places, Areas, and Circles for Diseases generally.

Pleuro-pneumonia or foot-and-mouth disease infected place.

8.—(1.) Where it appears to an inspector of a local authority that pleuro-pneumonia or foot-and-mouth disease exists, or has within the period herein-after mentioned existed, in a shed, field, or other place, he shall forthwith make and sign a declaration thereof. For the purposes of this sub-section the period shall be in the case of pleuro-pneumonia fifty-six days, and in the case of foot-and-mouth disease ten days.

(2.) The inspector shall serve a notice, signed by him, of the declaration on the occupier of that shed, field, or other place, and, in the case of foot-and-mouth disease, also on the occupier of any land or buildings contiguous thereto as he may consider necessary.

(3.) Thereupon that shed, field, or other place shall become and be a place infected with pleuro-pneumonia or foot-and-mouth disease, as the case may be, subject to the determination and declaration of the local authority (*g*).

(4.) The inspector shall, with all practicable speed, inform the local authority of his declaration and notice, and shall send his declaration and a copy of his notice to the local authority, and shall, with all practicable speed, inform the Board of Agriculture of his declaration and notice, and send a copy of the same to the Board.

(*g*) *Cf.* s. 5 (3). Under this section the determination is to be that of the local authority.

(5.) The local authority shall forthwith on receipt of that information inquire into the correctness of the inspector's declaration, with the assistance and advice, in the case of pleuro-pneumonia, and if so required by Order of the Board in the case of foot-and mouth disease, of a veterinary inspector, or of a person qualified according to this Act to be such (*h*). Sect. 8 (5).

(6.) If the local authority are satisfied of the correctness of the inspector's declaration as regards the existence or past existence of pleuro-pneumonia or foot-and-mouth disease, they shall by order determine and declare accordingly, and prescribe the limits of the place infected with pleuro-pneumonia or foot-and-mouth disease, and may, if they think fit, include within those limits any lands or buildings adjoining or near to the shed, field, or other place to which the inspector's declaration relates.

(7.) The local authority may include in a place infected with pleuro-pneumonia or foot-and-mouth disease any adjoining part of the district of another local authority, with the previous consent in writing of that authority, but not otherwise.

(8.) If the local authority are not satisfied of the correctness of the inspector's declaration as regards the existence or past existence of pleuro-pneumonia or foot-and-mouth disease, they shall by order determine and declare accordingly; and thereupon, as from the time specified in that behalf in the order, the shed, field or other place to which the inspector's declaration relates, shall cease to be a place infected with pleuro-pneumonia or foot-and-mouth disease, as the case may be.

(9.) The local authority shall forthwith report to the Board the declaration of the inspector, and the proceedings of the local authority thereon, and shall state whether or not it is, in their opinion, expedient that an infected area, comprising the infected place, should be declared, and, if so, what should, in their opinion, be the limits of that area, and whether or not there is within that area any place used for the holding of a market, fair, exhibition, or sale of animals or any specified kind thereof, and, if so, whether or not it is, in their opinion, expedient that the holding in that area, while infected, of a market, fair, exhibition or sale of animals, or such kind thereof, should be prohibited or restricted by order of the Board (*i*).

(10.) This section shall, notwithstanding anything therein contained, be construed and have effect subject to the subsequent section of this Act, whereby the Board are required to make, by order, provision respecting the case of animals found to be affected with pleuro-pneumonia or foot-and-mouth disease while exposed for sale or exhibited in a market, fair, sale-yard, or place of exhibition,

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(*h*) See the definition of "veterinary inspector" in s. 59, *post*.

(*i*) The board have a general power to prohibit the holding of a market or fair under s. 22 (xix.), *post*. As to infected areas, see s. 9, *post*.

Sect. 8 (10)

and in other circumstances specified in the same section, and generally while being in a place not in the possession or occupation, or under the control, of the owner of the animals (*k*).

(11.) Where a local authority have declared a place to be infected with pleuro-pneumonia or foot-and-mouth disease, they may, if they think fit, having first obtained the assistance and advice of a veterinary inspector, or of a person qualified according to this Act to be such (*l*), at any time after the expiration of the period hereinafter mentioned from the date of the cessation therein of pleuro-pneumonia or foot-and-mouth disease, but not sooner, declare by order that place to be free from pleuro-pneumonia or foot-and-mouth disease. For the purposes of this sub-section the period shall be in the case of pleuro-pneumonia fifty-six days, and in the case of foot-and-mouth disease fourteen days or such longer period not exceeding twenty-eight days as the Board by general order prescribe.

(12.) The Board may at any time, if they think fit, on any evidence satisfactory to them, by order—

(a) declare any shed, field, or other place with or without any lands or buildings adjoining or near thereto, to be a place infected with pleuro-pneumonia or foot-and-mouth disease;

(b) extend, contract, or otherwise alter the limits of any place infected with pleuro-pneumonia or foot-and-mouth disease declared either by the Board or a local authority; or

(c) declare any place which has been declared by the Board or a local authority to be a place infected with pleuro-pneumonia or foot-and-mouth disease, to be free from pleuro-pneumonia or foot-and-mouth disease as the case may be.

Pleuro-pneumonia or foot-and-mouth disease infected area.

9.—(1.) The Board of Agriculture may at any time if they think fit, on any evidence satisfactory to them by order—

(a) declare any area wherein a place infected with pleuro-pneumonia or foot-and-mouth disease is situate to be an area infected with pleuro-pneumonia or foot-and-mouth disease; and

(b) extend the limits of an area infected with pleuro-pneumonia or foot-and-mouth disease; and

(c) when there is not within an area so declared, or within some particular portion thereof, any place infected with pleuro-pneumonia or foot-and-mouth disease, as the case may be, declare that area or that portion thereof to be free from pleuro-pneumonia or foot-and-mouth disease.

(2.) The Board on making any order declaring an area to be an area infected with pleuro-pneumonia or foot-and-mouth disease shall

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(*k*) The section here referred to is s. 9 (2), *post*.

(*l*) See the definition of "veterinary inspector" in s. 59, *post*.

consider whether it is necessary or expedient to prohibit the holding in that area, while infected, of any market, fair, exhibition, or sale of animals or any specified kind thereof, and shall either prohibit the holding thereof accordingly or allow the same to be held on such terms and conditions, if any, as they think fit to prescribe (*m*),

General provisions as to infected places and areas.

10.—(1.) The Board of Agriculture may make such orders as they think fit, subject and according to the provisions of this Act, for prescribing the cases in which places and areas are to be declared to be infected with a disease other than cattle plague, pleuro-pneumonia, or foot-and-mouth disease (*n*), and the authority, mode, and conditions by, in, and on which declarations in that behalf are to be made, and the effect and consequences thereof, and the duration and discontinuance thereof, and other matters connected therewith.

(2.) Every place or area so declared infected, as well as a place or area declared infected with cattle plague, pleuro-pneumonia, or foot-and-mouth disease, shall be an infected place or area for the purposes of this Act.

(3.) Notwithstanding anything in this Act, where the Board, on inquiry, and after communication with the local authority, but without prejudice to the powers of the Board as regards cattle plague, are satisfied that a declaration of a place being an infected place has been made in error respecting the existence or past existence of disease, or respecting the limits of a place, or respecting any other matter of fact whereon the declaration proceeded, the Board may by order cancel the declaration as regards the infected place, or as regards any part thereof, as they think fit.

(4.) Where, in accordance with the provisions of this Act, a place or an area or a portion of an area is declared free from a disease, or a declaration of a place being an infected place is cancelled as regards the place or as regards any part thereof, then, from the time specified in that behalf by the Board or a local authority, as the case may be, the place, or area or that portion of the area or that part of the place, shall cease to be, or to be in, an infected place or area.

(5.) An order of the Board or of a local authority declaring a place to be an infected place or area, or declaring a place or area, or a portion of an area, to be free from disease, or cancelling a declaration, shall be conclusive evidence to all intents of the existence or past existence or cessation of the disease, or of the error, and of any other matter whereon the order proceeds.

(*m*) The board have a general power to prohibit the holding of a market or fair under s. 22 (xix.), *post*.

(*n*) See the definition of "disease" in s. 59. The board have power under s. 22 (xxxv.) to extend the definition so as to include other diseases.

Sect. 11 (1).

Movement into, within, or out of infected places and areas in case of pleuro-pneumonia and foot-and-mouth disease.

11.—(1.) Cattle (*o*) shall not be moved into, within, or out of a place or area infected with pleuro-pneumonia otherwise than in accordance with the conditions contained in Part I. of the First Schedule to this Act.

(2.) Animals shall not be moved into, within, or out of a place or area infected with foot-and-mouth disease otherwise than in accordance with the conditions contained in Part II. of the First Schedule to this Act.

Provisions as to infected circles.

12.—(1.) Where the Board of Agriculture by order declare that this section shall apply in the case of any disease, then, upon any place becoming, in pursuance of a declaration made and signed by an inspector of a local authority, a place infected with that disease, the whole space lying within a distance of half a mile from any part of the infected place shall become and be a circle infected with that disease: Provided that the Board may, if they think fit, limit the application of any such order to infected places in any particular district or districts.

(2.) Where, under or in pursuance of this Act, the place, in respect of which an infected circle has been constituted in pursuance of this section, ceases to be an infected place, the infected circle shall cease to exist.

(3.) The Board may make such orders as they think fit for giving public notice of the existence of, and for contracting, the limits of, and dissolving infected circles, and for prohibiting or regulating the movement of animals into, within, and out of infected circles, or for any of those purposes, or for authorizing a local authority to make regulations for those purposes or any of them, subject to such conditions, if any, as the Board think fit to prescribe.

(4.) Where two or more circles infected with the same disease adjoin or overlap each other, the whole of the infected circles shall be deemed for the purpose of the movement of animals under any orders or regulations made in pursuance of this section to be one infected circle.

Power to exclude strangers by notice.

13. A person owning or having charge of any animals in a place or area declared infected with any disease may affix, at or near the entrance to a building or inclosure in which the animals are, a notice forbidding persons to enter therein without the permission mentioned in the notice; and thereupon it shall not be lawful for any person, not having by law a right of entry or way into, on, or over that building or inclosure, to enter or go into, on, or over the same without that permission.

(*o*) Note the distinction between "cattle," to which this sub-section relates, and "animals," which are the subjects of the next sub-section. See the definition of these sub-sections in s. 59, *post*.

Slaughter by Board of Agriculture in case of Pleuro-pneumonia, Foot-and-mouth Disease, or Swine-fever.

Sect. 14 (1).

Slaughter by Board of Agriculture in pleuro-pneumonia, and compensation.

14.—(1.) The Board of Agriculture shall (*p*) cause to be slaughtered all cattle affected with pleuro-pneumonia.

(2.) The Board may, if they think fit, in any case cause to be slaughtered :—

(a) any cattle suspected of being affected with pleuro-pneumonia ; and

(b) any cattle which are or which have been in the same field, shed, or other place, or in the same herd or otherwise in contact with cattle affected with pleuro-pneumonia, or which appear to the Board to have been in any way exposed to the infection of pleuro-pneumonia.

(3.) The Board shall for cattle slaughtered under this section pay compensation as follows :—

(a) where the animal slaughtered was affected with pleuro-pneumonia, the compensation shall be three-fourths of the value of the animal immediately before it became so affected, but so that the compensation do not in any such case exceed thirty pounds ; and

(b) in every other case the compensation shall be the value of the animal immediately before it was slaughtered, but so that the compensation do not in any case exceed forty pounds.

(4.) Where the Board have decided that any head of cattle is to be slaughtered under this section, the Board shall, if the owner of such head of cattle by notice in writing so requires, cause the same to be slaughtered within twenty-one days after the receipt of the notice.

(5.) The costs of the execution of this section in Great Britain shall be paid by the Board out of the moneys standing to the Cattle Pleuro-pneumonia Account for Great Britain.

Slaughter by Board of Agriculture in foot-and mouth disease, and compensation.

15.—(1.) The Board of Agriculture may, if they think fit, in any case cause to be slaughtered—

(a.) Any animals affected with foot-and-mouth disease, or suspected of being so affected ; and

(b.) Any animals which are or have been in the same field, shed, or other place, or in the same herd or flock, or otherwise in contact with animals affected with foot-and-mouth disease, or which appear to the Board to have been in any way exposed to the infection of foot-and-mouth disease.

(2.) The Board shall for animals slaughtered under this section pay compensation as follows :—

(i.) Where the animal slaughtered was affected with foot-and-mouth disease the compensation shall be the value of the animal immediately before it became so affected :

(*p*) Here, also, observe the distinction between the imperative language of this sub-section and the permissive words of the next.

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(ii.) In every other case the compensation shall be the value of the animal immediately before it was slaughtered (*q*).

(3.) The costs of the execution of this section in Great Britain shall be paid by the Board out of the moneys standing to the Cattle Pleuro-pneumonia Account for Great Britain.

Slaughter by Board of Agriculture in swine-fever and compensation.

16.—(1.) The Board of Agriculture may, if they think fit, in any case cause to be slaughtered—

(a.) Any swine affected with swine-fever, or suspected of being so affected; and

(b.) Any swine which are or have been in the same field, pig-sty, shed, or other place, or in the same herd, or otherwise in contact with swine affected with swine fever, or which appear to the Board to have been in any way exposed to the infection of swine-fever.

(2.) The Board shall for animals slaughtered under this section pay compensation as follows:—

(i.) Where the animal slaughtered was affected with swine-fever, the compensation shall be one-half of the value of the animal immediately before it became so affected:

(ii.) In every other case the compensation shall be the value of the animal immediately before it was slaughtered (*r*).

(3.) The costs of the execution of this section in Great Britain, including the costs of such measures under this Act as may seem to the Board necessary for preventing the spread of swine-fever, shall be paid by the Board out of the money standing to the Cattle Pleuro-pneumonia Account for Great Britain.

Additional officers, and expenses for purposes of slaughter.

17. The Board of Agriculture may, for the purposes of the execution of the sections of this Act relating to the slaughter by the Board of cattle, animals, or swine, on account of pleuro-pneumonia, foot-and-mouth disease, or swine fever, employ such additional inspectors, valuers, and other persons, and at such remuneration and may incur such expenses as, subject to the sanction of the Treasury, the Board think necessary; and all costs and expenses incurred under this section shall be paid by the Board out of the money standing to the Cattle Pleuro-pneumonia Account for Great Britain.

Pleuro-pneumonia Account for Great Britain.

18.—(1.) The account opened at the Bank of England under the provisions of section two of the Contagious Diseases (Animals) Pleuro-pneumonia Act, 1890 (and therein and in this Act referred to as the Cattle Pleuro-pneumonia Account for Great Britain), is hereby continued, and there shall be paid to the said account—

(a) such moneys (not exceeding one hundred and forty thousand pounds in any one year) as may be provided by Parliament towards defraying the costs incurred by the Board of

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(*q*) There is no limit in this section or the next as to the amount of the compensation.

(*r*) See the preceding note.

Agriculture in the execution in Great Britain of the provisions of this Act relating to the slaughter of cattle, animals, or swine, on account of pleuro-pneumonia, foot-and-mouth disease, or swine-fever, and such other costs and expenses as are by this Act made payable out of the money standing to the Cattle Pleuro-pneumonia Account for Great Britain; and

(b) all sums received by the Board on the sale of the carcases of cattle, animals, or swine slaughtered by the Board on account of pleuro-pneumonia, foot-and-mouth disease, or swine-fever, after deducting any amounts payable thereout as excess to the owners of the cattle, animals, or swine, under this Act.

Provided that of the money provided by Parliament for the Cattle Pleuro-pneumonia Accounts for Great Britain and Ireland not more than fifty thousand pounds shall be so provided for the costs of the execution of this Act as respects swine-fever in any one year.

(2.) If in any financial year the money standing to the Cattle Pleuro-pneumonia Account for Great Britain is insufficient to defray the costs and expenses by this Act made payable out of the money standing to the Cattle Pleuro-pneumonia Account for Great Britain, the Local Government Board and the Secretary for Scotland shall out of the Local Taxation Account (*s*) and the Local Taxation (Scotland) Account respectively, pay to the Cattle Pleuro-pneumonia Account for Great Britain in the proportions provided in the Second Schedule to this Act such additional sums as may be certified by the Board of Agriculture to be required for defraying those costs and expenses.

(3.) The regulations contained in the Second Schedule to this Act shall apply to the Cattle Pleuro-pneumonia Account for Great Britain.

Slaughter in Disease, and Compensation generally.

Power for Board of Agriculture to provide for slaughter in diseases other than cattle plague.

19. The Board of Agriculture may make such orders as they think fit subject and according to the provisions of this Act for directing or authorising, in case of the existence or suspected existence of any disease other than cattle plague and under such conditions as the Board think fit to prescribe, the slaughter of animals by local authorities, either generally or in particular instances, and in all or any of such cases the payment of compensation for the same by local authorities out of the local rate (*t*); and the Board may by such orders direct or authorise the slaughter both of animals actually affected with disease, and also of animals suspected of disease, or

(*s*) This is the account to which the proceeds of the local taxation licence and part of the estate duty are carried under the Local Government Act, 1888, ss 20—21, *ante*, p. 46, as amended by 57 & 58 Vict. c. 30, s. 19, *ante*, p. 49.

(*t*) For the definition of the local rate, see s. 40, *post*. In a county the local rate is the county rate.

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being or having been in the same field, shed, or other place, or in the same herd or flock, or otherwise in contact, with animals affected with disease, or being or having been otherwise exposed to the infection thereof.

General provisions relative to slaughter and compensation.

20.—(1.) The Board of Agriculture may, notwithstanding anything in this Act, reserve for observation and treatment an animal liable to be slaughtered under this Act by order of the Board or of a local authority, but subject to payment of compensation by the Board or the local authority, as the case may be, as in case of actual slaughter.

(2.) Where an animal has been slaughtered under this Act by order of the Board or of a local authority, the carcase of the animal shall belong to the Board or to the local authority, as the case may be, and shall be buried, or sold, or otherwise disposed of by the Board or the local authority, or as they direct, as the condition of the animal or carcase and other circumstances may require or admit; and any money received by a local authority on any such sale shall be carried by them to the credit of the local rate (*u*).

(3.) If, in any case, the sum received by the Board or a local authority on sale of a carcase under this section exceeds the amount paid for compensation to the owner of the animal slaughtered, the Board or the local authority, as the case may be, shall pay that excess to the owner, after deducting reasonable expenses.

(4.) Where an animal has been slaughtered under this Act by order of the Board or of a local authority, the Board or the local authority, as the case may be, may use for the burial of the carcase any ground in the possession or occupation of the owner of the animal and suitable in that behalf, or any common or uninclosed land, but, as regards the use by a local authority of common or uninclosed land, not without the approval of the Board.

(5.) If the owner of an animal slaughtered under this Act by order of the Board or of a local authority has an insurance on the animal, the amount of the compensation awarded to him under this Act may be deducted by the insurers from the amount of the money payable under the insurance before they make any payment in respect thereof.

(6.) A local authority shall keep in such manner as the Board by general order direct, a record relative to slaughter, which record shall be admitted in evidence.

(7.) Notwithstanding anything in this Act, the Board or a local authority, as the case may be, may, if they think fit, withhold either wholly or partially, compensation or other payment in respect of an animal slaughtered under this Act by their respective order, where the owner or the person having charge thereof has, in the judgment of the Board or the local authority, as the case may be, been guilty, in relation to the animal, of an offence against this Act,

(*u*) See the preceding note.

or where the animal, being a foreign animal, was, in their judgment, diseased at the time of its landing. Sect. 20 (7).

Exceptional Powers for Transit, and in other Cases.

Board of Agriculture to provide for pleuro-pneumonia or foot-and-mouth during transit, etc.

21.—(1.) The Board of Agriculture shall, by order, make such further or other provision as they think necessary or expedient respecting the case of animals found to be affected with pleuro-pneumonia or foot-and-mouth disease—

(i) while exposed for sale or exhibited in a market, fair, sale-yard, place of exhibition, or other place; or

(ii) while placed in a lair or other place before exposure for sale; or

(iii) while in transit or in course of being moved by land or by water; or

(iv) while in a foreign animals wharf or foreign animals quarantine station; or

(v) while being in a slaughter-house or place where animals are slaughtered or are kept with a view to slaughter; or

(vi) while being on common or uninclosed land; or

(vii) generally, while being in a place not in the possession or occupation or under the control of the owner of the animals.

(2.) The Board shall, by orders under this section, make such provision as they think fit for the consequences under this Act of animals being so found in the circumstances aforesaid, as well with regard to the animals as with regard to the places where they are when so found and other places, and with regard to animals being or having been in the same shed or stable, herd or flock, or in contact, with animals so found.

(3.) The Board may, by orders under this section relating to particular places, make such provision as they think fit for the consequences aforesaid.

(4.) Every order under this section shall have full effect notwithstanding any provision of this Act requiring the declaration of a place infected with pleuro-pneumonia or foot-and-mouth disease or relating to any consequence thereof, or to any matter connected herewith, and notwithstanding any other provision whatsoever of this Act.

Disease and Movement, generally.

Power for Board of Agriculture to make orders for prevention or checking of

22. The Board of Agriculture may make such orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them (*v*):

(i) for prescribing and regulating the publication by placards, handbills, or otherwise, in the immediate neighbourhood

(*v*) The orders made under this section are too voluminous for inclusion in this work. The following is a list of the general orders under the Diseases of Animals Acts, 1894 and 1896, in force on the January 1st, 1898:—

The Swine-Fever Order of 1894; the Swine-Fever (Movement from Ireland) Temporary Order of 1894; the Glanders or Farcy Order of 1894; the Cattle-Plague Order of 1895; the Pleuro-Pneumonia Order of 1895; the Foot-and-

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disease, and other purposes.

of a place or area declared infected, of the fact of such declaration;

(ii) for prohibiting or regulating the movement of animals and persons into, within, or out of an infected place or area;

(iii) for prescribing and regulating the isolation or separation of animals being in an infected place or area;

(iv) for prohibiting or regulating the removal of carcases, fodder, litter, utensils, pens, hurdles, dung, or other things into, within, or out of an infected place or area;

(v) for prescribing and regulating the destruction, burial, disposal, or treatment of carcases, fodder, litter, utensils, pens, hurdles, dung, or other things, being in an infected place or area, or removed thereout;

(vi) for prescribing and regulating the cleansing and disinfection of infected places and areas, or parts thereof;

(vii) for prescribing and regulating the disinfection of the clothes of persons coming in contact with or employed about diseased or suspected animals, or being in an infected place, and the use of precautions against the spreading of disease by such persons;

(viii) for prohibiting or regulating the digging up of carcases which have been buried;

(ix) for prohibiting or regulating the exposure of diseased or suspected animals in markets or fairs or sale-yards, or other public or private places, where animals are commonly exposed for sale, and the placing thereof in lairs or other places adjacent to or connected with markets or fairs, or where animals are commonly placed before exposure for sale;

(x) for prohibiting or regulating the sending or carrying of diseased or suspected animals, or of dung or other thing likely to spread disease, or the causing the same to be sent or carried, on railways, canals, rivers, or inland navigations, or in coasting vessels, or otherwise;

(xi) for prohibiting or regulating the carrying, leading, or driving of diseased or suspected animals, or the causing them to be

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Mouth Disease Order of 1895; the Sheep-Pox Order of 1895; the Sheep-Scab Order of 1895; the Anthrax Order of 1895; the Animals (Transit and General) Order of 1895; the Water Supply on Railways Order of 1895; the Swine-Fever (Infected Areas) Order of 1896; the Swine-Fever (Suspected Zones) Order of 1896; the Foreign Animals Order of 1896; the Channel Islands Animals Order of 1896; the Isle of Man Animals Order of 1896; the Foreign Animals (Quarantine) Order of 1896; the Markets and Fairs (Swine-Fever) Order of 1896; the Rabies Order of 1897; the Importation of Dogs Order of 1897; the Swine-Fever (Movement from Ireland) Temporary Order of 1897 (No. 4); the Foreign Animals (Amendment) Order of 1897.

The right to lay an information for an offence against this Act and the orders made thereunder is not restricted to the local authorities whose duty it is to execute and enforce it, but such an information may be laid by a common informer. *R.* v. *Stewart*, [1896] 1 Q. B. 300; 65 L. J. M. C. 83; 74 L. T. (N.S.) 54; 44 W. R. 368; 60 J. P. 356.

carried, led, or driven on highways or thoroughfares, or elsewhere;

(xii) for prohibiting or regulating the placing or keeping of diseased or suspected animals on commons or uninclosed lands, or in fields or other places insufficiently fenced, or on the sides of highways;

(xiii) for prescribing and regulating the seizure, detention, and disposal of a diseased or suspected animal exposed, carried, kept or otherwise dealt with in contravention of an order of the Board; and for prescribing and regulating the liability of the owner or consignor or consignee of such animal to the expenses connected with the seizure, detention and disposal thereof;

(xiv) for prescribing the mode of ascertainment of the value of an animal slaughtered or liable to be slaughtered, by order of the Board or of a local authority;

(xv) for regulating applications for, and the mode of payment of, compensation to be paid out of money provided by Parliament;

(xvi) for prescribing and regulating the destruction, burial, disposal, or treatment of carcases of animals slaughtered by order of the Board or of a local authority, or dying while diseased or suspected;

(xvii) for prohibiting or regulating the movement of animals, and the removal of carcases, fodder, litter, dung, and other things, and for prescribing and regulating the isolation of animals newly purchased;

(xviii) for prescribing and regulating the issue and production of licences respecting movement and removal of animals and things;

(xix) for prohibiting or regulating the holding of markets, fairs, exhibitions, and sales of animals (*w*);

(xx) for prescribing and regulating the cleansing and disinfection of places used for the holding of markets, fairs, exhibitions, or sales of animals, or for lairage of animals, and yards, sheds, stables, and other places used for animals;

(xxi) for prescribing and regulating the cleansing and disinfection of vessels, vehicles, and pens and other places, used for the carrying of animals for hire or purposes connected therewith:

(xxii) for prescribing modes of cleansing and disinfection;

(xxiii) for prohibiting the conveyance of animals by any specified vessel to or from any port in the United Kingdom for such time as the Board may consider expedient:

(*w*) See also s. 8, sub-s. (9), s. 9 (2). The power hereby conferred is not, however, limited by these sections. As to what amounts to a "sale" of animals, see *Maclean* v. *Monk*, 77 L. T. (N.S.) 663.

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(xxiv) for insuring for animals carried by sea a proper supply of food and water and proper ventilation during the passage and on landing;

(xxv) for protecting them from unnecessary suffering during the passage and on landing;

(xxvi) for protecting animals from unnecessary suffering during inland transit;

(xxvii) for securing a proper supply of water and food to animals during any detention thereof;

(xxviii) for prescribing and regulating the marking of animals;

(xxix) for prohibiting, absolutely or conditionally, the use, for the carrying of animals or for any purpose connected therewith, of a vessel, vehicle, or pen or other place in respect whereof, or of the use whereof, a penalty has been recovered from any person for an offence against this Act;

(xxx) for prescribing and regulating the muzzling of dogs, and the keeping of dogs under control;

(xxxi) for prescribing and regulating the seizure, detention, and disposal (including slaughter) of stray dogs and of dogs not muzzled, and of dogs not being kept under control, and the recovery from the owners of dogs of the expenses incurred in respect of their detention;

(xxxii) for prescribing and regulating the payment and recovery of expenses in respect of animals;

(xxxiii) for prescribing and regulating the form and mode of service or delivery of notices and other instruments;

(xxxiv) for authorising a local authority to make regulations for any of the purposes of this Act or of an order of the Board subject to such conditions, if any, as the Board, for the purpose of securing uniformity and the due execution of the provisions of this Act, think fit to prescribe;

(xxxv) for extending, for all or any of the purposes of this Act, the definition of disease of this Act, so that the same shall for those purposes, or any of them, comprise any disease of animals in addition to the diseases mentioned in this Act;

(xxxvi) for extending, for all or any of the purposes of this Act, the definition of animals in this Act, so that the same shall for those purposes or any of them comprise any kind of four-footed beasts, in addition to the animals mentioned in this Act; and

(xxxvii) generally, for the better execution of this Act, or for the purpose of in any manner preventing the spreading of disease.

Provision of water and food at railway stations.

23.—(1.) Every railway company shall make a provision, to the satisfaction of the Board of Agriculture, of water and food, or either of them, at such stations as the Board, by general or specific description, direct, for animals carried, or about to be or having been carried, on the railway of the company.

(2.) The water and food so provided, or either of them, shall be supplied to any such animal by the company carrying it, on the request of the consignor or of any person in charge thereof.

(3.) As regards water, if, in the case of any animal, such a request is not made, so that the animal remains without a supply of water for twenty-four consecutive hours, the consignor and the person in charge of the animal shall each be guilty of an offence against this Act; and it shall lie on the person charged to prove such a request and the time within which the animal had a supply of water.

(4.) But the Board may, if they think fit, by order prescribe any other period, not less than twelve hours, instead of the period of twenty-four hours aforesaid, generally, or in respect of any particular kind of animals.

(5.) The company supplying water or food under this section may make in respect thereof such reasonable charges (if any) as the Board by order approve, in addition to such charges as they are for the time being authorised to make in respect of the carriage of animals. The amount of those additional charges accrued due in respect of any animal shall be a debt from the consignor and from the consignee thereof to the company, and shall be recoverable by the company from either of them, with costs, by proceedings in any court of competent jurisdiction. The company shall have a lien for the amount thereof on the animal in respect whereof the same accrued due, and on any other animal at any time consigned by or to the same consignor or consignee to be carried by the company.

Foreign Animals.

24. * * * * * (*x*).

Orders prohibiting importation of animals.

25. The Board of Agriculture may, whenever they deem it expedient so to do, for the purpose of preventing the introduction of disease into the United Kingdom, make orders for prohibiting the landing of animals or of any specified kind thereof, or of carcases, fodder, litter, dung, or other thing brought from any specified country out of the United Kingdom or any specified part of any such country, and they shall prohibit the landing of such animals whenever they are not satisfied with respect to any such country or any specified part thereof, that having regard to the sanitary condition of the animals therein or imported therefrom, to the laws made by such country for the regulation of the importation and exportation of animals, and for the prevention of the introduction or spreading

(*x*) The Diseases of Animals Act, 1896 (59 & 60 Vict. c. 15), s. 1 (1), provides that for s. 24 of the Act of 1894 there shall be substituted the following section, namely: "The provisions set forth in Part I. (slaughter at port of landing) of the Third Schedule to this Act shall apply to all foreign animals other than (a) foreign animals, the landing of which, is for the time being, prohibited by order of the Board of Agriculture; and (b) foreign animals intended for exhibition or other exceptional purposes, and the landing of which is allowed for the time being by the board, subject to the provisions of Part II. (quarantine) of the Third Schedule to this Act."

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of disease, and to the administration of such laws, the circumstances are such as to afford reasonable security against the importation therefrom of animals affected with foot-and-mouth disease (*y*).

26. * * * * * (*z*).

Orders admitting animals to quarantine.

27. Notwithstanding anything contained in this Act or in any order of the Board of Agriculture, the Board may make such orders as they think fit for allowing the landing of any foreign animals intended for exhibition, or for other exceptional purposes, and for allowing such animals to be landed without being subject to the provisions of Part I. (slaughter at port of landing) of the Third Schedule to this Act, and the provisions of Part II. (quarantine) of the said Schedule shall apply to any animals so allowed to be landed.

Special provisions as to Channel Islands and Isle of Man.

28. In relation to animals brought from the Channel Islands or the Isle of Man, the Board of Agriculture may, if they think fit, by order or by licence, alter or add to the provisions of the Third Schedule to this Act relating to slaughter or to quarantine, as the case may require.

Orders to be laid before Parliament.

29. Every order made in pursuance of this Act in relation to the landing or conveyance of foreign animals shall be forthwith laid before both Houses of Parliament.

Regulation of ports.

30.—(1.) The Board of Agriculture may make such orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them:

(i) for prescribing the ports at which alone foreign animals may be landed;

(ii) for defining the limits of ports for the purposes of this Act;

(iii) for defining parts of ports;

(iv) for prohibiting or regulating the movement of animals into, within, or out of a defined part of a port;

(v) for prescribing and regulating the inspection and examination, and the mode, time, and conditions of slaughter, of animals in a defined part of a port;

(vi) for prescribing and regulating the disposal of animals, not being foreign animals, and being in a defined part of a port;

(vii) for regulating the removal of carcases, fodder, litter, utensils, dung, or other things into, within, or out of a defined part of a port, and the disposal thereof, when likely to introduce or spread disease;

(viii) for prescribing and regulating the cleansing and disinfection of a defined part of a port or of parts thereof;

(ix) for prescribing and regulating the disinfection or destruction of things being in a defined part of a port or removed thereout;

(*y*) See note (*x*) *supra*.

(*z*) This section was repealed by the Diseases of Animals Act, 1896 (59 & 60 Vict. c. 15), s. 1, sub-s. (2).

(x) for regulating the movement of persons into, within, or out of a defined part of a port; Sect. 30 (1).

(xi) for prescribing and regulating the disinfection of the clothes of persons employed or being in a defined part of a port, and the use of precautions against the introduction or spreading by them of disease;

(xii) for prescribing and regulating the seizure and detention of any foreign animal, carcase, fodder, litter, dung, or other thing whereby disease may be introduced or spread; and

(xiii) generally, for the better execution of this Act in relation to foreign animals, carcases, fodder, litter, dung, or other things, or for the purpose of in any manner preventing the introduction or spreading thereby of disease.

(2.) Notwithstanding anything in this Act, a defined part of a port, or any part thereof, shall not be declared to be an infected place, or be made part of an infected place, otherwise than by the Board.

(3.) Where the district or part of a district of a local authority under this Act is or comprises, or is comprised in, a port or part of a port, the Board may, if they think fit, in relation to that port or part of a port, by order, make any body, other than the body constituted the local authority by this Act for such district or part of a district, the local authority for the purposes of the provisions of this Act relating to foreign animals, and, in connexion with the local authority so made, prescribe the local rate, if any, and the clerk of the local authority.

General Provisions as to Local Authorities.

Committees of local authorities.

31.—(1.) The provisions in the Fourth Schedule to this Act shall have effect with respect to committees of local authorities, but nothing therein contained shall prejudice or affect the power of a county council to delegate their powers to any committee or body under section twenty-eight of the Local Government Act, 1888 (*a*). 51 & 52 Vict. c. 41.

(2.) Provided that the Board of Agriculture, in any order made by them under this Act for authorising a local authority to make regulations, may direct that the power to make such regulations for any purpose specified in that behalf in the order shall be exercised only by the local authority or their executive committee, and shall not be deputed to any other committee nor to a sub-committee.

Provision of wharves, stations, lairs, etc.

32.—(1.) A local authority may provide, erect, and fit up wharves, stations, lairs, sheds, and other places for the landing, reception, keeping, sale, slaughter, or disposal of foreign or other animals, carcases, fodder, litter, dung, and other things.

10 & 11 Vict. c. 14.

(2.) There shall be incorporated with this Act the Markets and Fairs Clauses Act, 1847, except sections six to nine and fifty-one to sixty thereof.

(*a*) See this section, *ante*, p. 64, and *Huth* v. *Clarke*, cited in the notes to that section.

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(3.) A wharf or other place provided by a local authority under this section shall be a market within that Act; and this Act shall be the special Act; and the prescribed limits shall be the limits of lands acquired or appropriated for purposes of this section; and bye-laws shall be approved by the Board of Agriculture, which approval shall be sufficient without any other approval or allowance, notice of application for approval being given, and proposed bye-laws being published before application, as required by the Markets and Fairs Clauses Act, 1847.

10 & 11 Vict. c. 14.

(4.) A local authority may charge for the use of a wharf or other place provided by them under this section such sums as may be imposed by bye-laws, and the same shall be deemed tolls authorised by the special Act.

(5.) All sums so received by the local authority shall be carried to a separate account, and shall be applied in payment of interest on money borrowed by them under the Contagious Diseases (Animals) Act, 1869, the Contagious Diseases (Animals) Acts, 1878 to 1893, or this Act, and in repayment of the principal thereof, and, subject thereto, towards discharge of their expenses under this Act.

32 & 33 Vict. c. 70.

(6.) The local authority shall make such periodical returns to the Board of Agriculture of their expenditure and receipts in respect of the wharf or other place as the Board require.

(7.) The Board, if satisfied on inquiry that the tolls taken by the local authority for the wharf or other place may properly be reduced, regard being had to the expenditure and receipts of the local authority in respect thereof, and to any money secured on the tolls, and to the other circumstances of the case, may require the local authority to submit to the Board, for their approval, a new schedule of tolls, and on failure of the local authority to do so to the satisfaction of the Board, may, by order, prescribe such tolls as the Board think fit, in lieu of those before approved by the Board.

(8.) The provisions of this section shall apply to a wharf or other place provided by a local authority under the Contagious Diseases (Animals) Act, 1869, or under the Contagious Diseases (Animals) Acts, 1878 to 1893.

32 & 33 Vict. c. 70.

Power for local authority to acquire land.

33.—(1.) A local authority may purchase, or may by agreement take on lease or at a rent, land for wharves or other places, or for use for burial of carcases, in cases where there is not any ground suitable in that behalf in the possession or occupation of the owner of the animal, or any common or uninclosed land suitable and approved by the Board of Agriculture in that behalf, or for any other purpose of this Act.

(2.) The local authority may (subject to any agreement) dispose of lands so acquired but not required for the purposes of this Act, carrying the money produced thereby to the credit of the local rate (*b*).

(*b*) See s. 40, *post*.

(3.) The regulations contained in section one hundred and seventy-six of the Public Health Act, 1875, shall be observed with respect to the purchase of land by a local authority for purposes of this Act, as if the local authority were a local board, and purposes of this Act were purposes of that Act; provided that the requisite advertisements and notices may be published and served in any two consecutive months, and that the local rate shall be substituted for the rates therein mentioned (*c*).

(4.) The powers conferred by this section may be exercised by a local authority with respect to land within or without their district.

Proceedings in case of default of local authorities.

34.—(1.) Where a local authority fail to execute or enforce any of the provisions of this Act, or of an order of the Board of Agriculture, the Board may by order empower a person therein named to execute and enforce those provisions, or to procure the execution and enforcement thereof.

(2.) The expenses incurred under any such order or in respect of any such default by or on behalf of the Board, including compensation for animals slaughtered, shall be expenses of the local authority, and the treasurer or other proper officer of the local authority shall pay the amount of such expenses to the Board on demand, and in default of payment a person appointed by the Board to sue in that behalf, may recover the amount of such expenses, with costs, from the local authority.

(3.) For the purposes of this section an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

(4.) The provisions of this section shall be without prejudice to the right or power of the Board, or any other authority or any person, to take any other proceedings for requiring a local authority to execute or enforce any of the provisions of this Act, or of an order of the Board (*d*).

Inspectors and other officers of local authority.

35.—(1.) Every local authority shall appoint so many inspectors and other officers as the local authority think necessary for the execution and enforcement of this Act, and shall assign to those inspectors and officers such duties, and salaries or allowances, and may delegate to any of them such authorities and discretion, as to the local authority seem fit, and may at any time revoke any appointment so made.

(2.) Every local authority shall keep appointed at all times at least one veterinary inspector (*e*), and shall appoint and at all times keep appointed so many other veterinary inspectors as the Board of

(*c*) Section 176 of the Public Health Act, 1875, is set out *ante*, p. 126. It enables the local authority to purchase land otherwise than by agreement.

(*d*) Having regard to this enactment, the board appear to have power to compel performance by a local authority of its statutory duties by *mandamus*.

(*e*) See s. 59, *post*.

Sect. 35 (2).

Agriculture, having regard to the extent and circumstances of the district of the local authority, direct.

(3.) The Board, on being satisfied on inquiry that an inspector of a local authority is incompetent, or has been guilty of misconduct or neglect, may, if they think fit, direct his removal, and thereupon he shall cease to be an inspector.

Reports to Board of Agriculture.

36. Every local authority and their inspectors and officers shall send and give to the Board of Agriculture such notices, reports, returns, and information as the Board require.

Orders and regulations of local authorities.

37.—(1.) An order or regulation of a local authority may be proved—

(i) by the production of a newspaper purporting to contain the order or regulation as an advertisement; or

(ii) by the production of a copy of the order or regulation purporting to be certified by the clerk of the local authority as a true copy.

(2.) An order or regulation so proved shall be taken to have been duly made, unless and until the contrary is proved.

(3.) An order or regulation of a local authority authorised by this Act or by an order of the Board of Agriculture shall alone be deemed for the purposes of this Act an order or regulation of a local authority.

Powers of local authorities to be for their district.

38. The provisions of this Act conferring powers on, or otherwise relating to, a local authority, or their inspectors or officers, shall, unless otherwise expressed, be read as having reference to the district of the local authority; and powers thereby conferred shall, unless it is otherwise expressed, be exerciseable and shall operate within and in relation to that district only.

Transfer of powers from one local authority to another, or formation of united district.

39.—(1.) Wherever the whole or any part of the district of any local authority is wholly surrounded by or has a common boundary with the district of any other local authority, those two local authorities may by agreement in writing between themselves make and vary and rescind provisions for the exercise by one of them (in this section referred to as the administering authority) of powers under this Act or any order of the Board of Agriculture within the whole or any part of the district of the other (in this section referred to as the surrendering authority) and for ascertaining the proportion of the expenses of the administering authority to be paid by the surrendering authority, such proportion to be fixed with reference to the rateable value of the part of the district of the surrendering authority surrendered to the administering authority as compared with the rateable value of the original area of the district of the administering authority (*d*).

(*d*) This is a useful provision under which a borough, which is of itself a district having a local authority under s. 3, may, for purposes of the Act, be dealt with by the county council; it also enables a county council to administer the Act in a detached or isolated portion of an adjoining county.

(2.) The district or part of a district subjected, in pursuance of an agreement under this section, to the powers of the administering authority, shall, for the purpose of the exercise of such powers, be deemed to be part of the district of the administering authority, and be dealt with accordingly.

(3.) Any expenses payable by a surrendering authority to an administering authority under this section shall be paid out of the local rate of the surrendering authority.

(4.) Provided that where the surrendering authority is the local authority for a borough and the administering authority is the local authority for a county to the rate of which such borough is assessed, the provision of this Act requiring that the local authority of the borough shall be paid by the local authority of the county the proportionate amount paid by the several parishes or parts of parishes in the borough shall not apply.

(5.) A local authority may by agreement in writing concur with any other local authority or authorities in appointing out of their respective bodies a joint committee consisting of such number of members with such tenure of office as they may determine, and in assigning to the joint committee a district consisting of the whole or such parts of the districts of the constituent authorities as the authorities may determine, and in delegating to the joint committee within their district the whole or any part of the powers of a local authority, and the joint committee shall, in respect of any powers so assigned to them, exercise the same powers and be subject to the same obligations, and this Act and any order of the Board shall, in respect of the district so assigned, take effect, as if such district were the district of a local authority and the joint committee were a local authority within the meaning of this Act.

(6.) All expenses incurred by the joint committee shall be apportioned among the component areas belonging to the different constituent authorities in proportion to the rateable values of such areas, as compared with each other, and shall be paid out of the local rates of the constituent authorities.

(7.) An agreement made under this section shall not be valid unless it has been approved by the Board (*e*).

(8.) The expression "powers" in this section shall not include the power of making or levying a rate, but shall include all other powers, duties, and obligations exerciseable by or imposed on a local authority or its officers under or by this Act, or any order of the Board.

Expenses of Local Authorities.

Expenses out of local rate.

40.—(1). The expenses of a local authority under this Act shall be defrayed out of the local rate; and such sums as may be necessary

(*e*) *I.e.*, the Board of Agriculture. See s. 59, *post*.

Sect. 40 (1).

to defray those expenses shall be levied with and as part of the local rate.

(2.) The local rate in England and Wales shall be as follows :—

(i) in the case of the local authority for a county, the county rate with the county fund;

(ii) in the case of the local authority for the City of London, the consolidated rate ; and

(iii) in the case of the local authority for a borough, the borough rate with the borough fund.

(3.) Provided that the payment of the expenses of the local authority for the county of London, under this Act, shall be a general county purpose for which the parishes in the City of London shall be liable to be assessed to county contributions (*f*).

Relief of boroughs from contribution to county expenses.

41.—(1.) In England and Wales the council of a borough assessed to the county rate of a county shall be paid by the council of the county the proportionate amount paid by the several parishes and parts of parishes in the borough towards the expenses under this Act of the council of the county (*g*).

(2.) Nothing in this Act shall affect the exemption of any borough which had a separate court of quarter sessions at the date of the passing of the Local Government Act, 1888, from contributing towards the expenses under this Act of the council of the county within which the borough is situate (*h*).

51 & 52 Vict. c. 41.

Power for local authority to borrow.

42.—(1.) Where the amount or proportion of the local rate levied or required for the purposes of this Act exceeds or would exceed in any financial year sixpence in the pound, a local authority may borrow at interest on the credit of the local rate any money necessary for the purposes of this Act, and may secure the repayment thereof, with interest, by mortgaging the local rate for any term not exceeding seven years.

(2.) Where the amount or proportion aforesaid exceeds or would exceed in any financial year ninepence in the pound, the Local Government Board may, if they think fit, on application of the local authority, extend the term to any period not exceeding fourteen years.

(3.) A local authority, borrowing for the purposes of this section, shall borrow subject to the provisions of the Local Loans Act, 1875 ;

38 & 39 Vict c. 83.

(*f*) Thus the City contributes towards the general rate for the county of London for purposes of this Act, although under s. 3, *ante*, the mayor, etc., of London are themselves a local authority, and their own expenses as such are payable out of the consolidated rate.

(*g*) This appears to apply to all boroughs, although under s. 3 of this Act only the larger quarter sessions boroughs have a local authority of their own. Under the repealed Act of 1878, s. 47 (1), this provision was intelligible, for every borough had a local authority for itself.

(*h*) Under the repealed Act of 1878, s. 47 (2), every quarter sessions borough was exempt, and the Local Government Act of 1888, s. 35, continued this exemption in the case of the larger quarter sessions boroughs only. The text, therefore, applies only to these boroughs.

and every loan raised under this section shall be discharged in manner prescribed by section thirteen of that Act, for which purpose a sinking fund is hereby prescribed, if in any case the Local Government Board so direct, but not otherwise (*i*). Sect. 42 (3).

(4.) The Public Works Loan Commissioners may, on the recommendation of the Local Government Board, advance money to a local authority in manner provided by the Public Works Loans (Money) Act, 1875, and any enactment amending or substituted for that Act, the same to be repaid, with interest, within the term aforesaid, and the local authority may so borrow accordingly. 38 & 39 Vict. c. 58.

(5.) A local authority, borrowing for any of the purposes of this Act, may, if they think fit, give as security, either with the local rate, if any, or separately therefrom, the charges which they are authorised to make for the use of a wharf or other place provided by them under this Act, and any estates, revenues, or funds belonging to them and not otherwise appropriated by law; and in that case the limitations in this section respecting the amount or proportion of rate and term of years shall not operate.

Police.

43.—(1.) The police force of each police area shall execute and enforce this Act and every order of the Board of Agriculture. Duties and authorities of constables.

(2.) Where a person is seen or found committing, or is reasonably suspected of being engaged in committing, an offence against this Act, a constable may, without warrant, stop and detain him; and, if his name and address are not known to the constable, and such person fails to give them to the satisfaction of the constable, the constable may, without warrant, apprehend him; and the constable may, whether so stopping or detaining or apprehending the person or not, stop, detain, and examine any animal, vehicle, boat, or thing to which the offence or suspected offence relates, and require the same to be forthwith taken back to or into any place or district wherefrom or whereout it was unlawfully removed, and execute and enforce that requisition.

(3.) If any person obstructs or impedes or assists to obstruct or impede a constable or other officer in the execution of this Act or of an order of the Board or of a regulation of a local authority, the constable or officer may without warrant apprehend the offender.

(4.) A person apprehended under this section shall be taken with all practicable speed before a justice, and shall not be detained without a warrant longer than is necessary for that purpose; and all

(*i*) The Local Loans Act, 1875, will be found set out *in extenso* in the Appendix to Lumley's Public Health. Under s. 13, a loan may be repaid by means of annuity certificates, debentures, the annual appropriation of a fixed sum to the discharge of part of the loan, or where it is prescribed by a sinking fund. Under the provision in the text, a sinking fund can only be resorted to if the Local Government Board so direct.

Sect. 43 (4).

enactments relating to the release of persons on recognizances taken by an officer of police or a constable shall apply in the case of a person apprehended under this section.

(5.) The foregoing provisions of this section respecting a constable extend and apply to any person called by a constable to his assistance.

(6.) A constable shall forthwith make a report in writing to his superior officer of every case in which he stops any person, animal, vehicle, boat, or thing under this section, and of his proceedings consequent thereon.

(7.) Nothing in this section shall take away or abridge any power or authority that a constable would have had if this section had not been enacted.

General Administrative Provisions.

General powers of inspectors.

44.—(1.) An inspector (*j*) shall have, for the purposes of this Act, all the powers which a constable has, under this Act or otherwise, in the place where the inspector is acting.

(2.) An inspector may at any time enter any land or shed to which this Act applies, or other building or place wherein he has reasonable grounds for supposing—

(a) that disease exists or has within fifty-six days existed; or

(b) that the carcase of a diseased or suspected animal is or has been kept, or has been buried, destroyed, or otherwise disposed of; or

(c) that there is to be found any pen, place, vehicle, or thing in respect whereof any person has on any occasion failed to comply with the provisions of this Act, or of an order of the Board of Agriculture, or of a regulation of a local authority; or

(d) that this Act or an order of the Board or a regulation of a local authority has not been or is not being complied with.

(3.) An inspector may at any time enter any pen, vehicle, vessel, or boat in which or in respect whereof he has reasonable grounds for supposing that this Act or an order of the Board or a regulation of a local authority has not been or is not being complied with.

(4.) An inspector entering, as herein-before by this section authorised, shall, if required by the owner, or occupier, or person in charge of the land, building, place, pen, vehicle, vessel, or boat, state in writing his reasons for entering.

(5.) A certificate of a veterinary inspector (*k*) to the effect that an animal is or was affected with a disease specified in the certificate shall for the purposes of this Act be conclusive evidence in all courts of justice of the matter certified.

(*j*) This means an inspector of the board or an inspector of the local authority. See s. 59, *post*.

(*k*) See the definition of "veterinary inspector" in s. 59, *post*.

(6.) An inspector of the Board shall have all the powers of an inspector throughout England or that part thereof for which he is appointed, and in addition to the powers herein-before conferred upon inspectors, an inspector of the Board may at any time, for the purpose of ascertaining whether pleuro-pneumonia, foot-and-mouth disease, or swine-fever exists, or has within fifty-six days existed, in any shed, land, or other place, enter such shed, land, or place. Sect. 45 (6).

Power for detention of vessels.

45.—(1.) Where an inspector of the Board of Agriculture is satisfied that this Act or an order of the Board or a regulation of a local authority has not been or is not being complied with on board a vessel in a port, then, on the representation in writing to that effect of the inspector, stating particulars of non-compliance, the vessel may be detained until the Board otherwise direct.

(2.) The officer detaining the vessel shall forthwith deliver to the master or person in charge of the vessel a copy of the representation.

(3.) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply in the case of such detention as if it were authorised or ordered under that Act. 57 & 58 Vict. c. 60.

Expenses of burial of carcases washed ashore.

46.—(1.) Where a carcase washed ashore is buried or destroyed under the direction of a receiver of wreck with authority from the Board of Trade, the expenses thereof shall be expenses of the local authority, and shall be paid by the local authority to the receiver on demand, and in default of payment shall be recoverable with costs by the receiver from the local authority.

(2.) Where a local authority has incurred any expenses under this section on account of the burial or destruction of the carcase of any animal which, or the carcase of which, was thrown or washed from any vessel, the owner of the vessel shall be liable to repay such expenses to the local authority; and the local authority may recover such expenses with costs in the same manner as salvage is recoverable.

Exemption from stamp duty and fees.

47. No stamp duty shall be payable on, and no fee or other charge shall be demanded or made for, any appointment, certificate, declaration, licence, or thing under this Act, or an order of the Board of Agriculture, or a regulation of a local authority, or for any inspection or other act precedent to the granting, making, or doing of a certificate, declaration, licence, or other thing.

Evidence and form and service of instruments.

48.—(1.) In any proceeding under this Act, no proof shall be required of the appointment or handwriting of an inspector or other officer of the Board of Agriculture or of the clerk or an inspector or other officer of a local authority.

(2.) Every notice under this Act or under any order or regulation made under this Act must be in writing.

(3.) Any notice or other instrument under this Act or under an order of the Board or a regulation of a local authority may be served

Sect. 48 (3).

on the person to be affected thereby, either by the delivery thereof to him personally, or by the leaving thereof for him at his last known place of abode or business, or by the sending thereof through the post in a letter addressed to him there.

(4.) A notice or other instrument to be served on the occupier of any building, land, or place may, except when sent by post, be addressed to him by the designation of the occupier of that building, land, or place, without naming or further describing him; and where it is to be served on the several occupiers of several buildings, lands, or places, may, except when sent by post, be addressed to them collectively by the designation of the occupiers of those several buildings, lands, or places, without further naming or describing them, but separate copies thereof being served on them severally.

Provisions respecting Orders of Board of Agriculture.

49.—(1.) The Board of Agriculture may alter or revoke any order of the Board.

(2.) Every order of the Board shall have effect as if it had been enacted by this Act (*l*).

(3.) The Board shall in the case of every order made by them under this Act, publish in the London Gazette a notice that the order has been made, and of the place where copies of the order may be obtained.

(4.) Every local authority shall at their own expense publish every order of the Board, and every licence, or other instrument sent to them by the Board for publication, in such manner as the Board direct, and, subject to and in the absence of any direction, by advertisement in a newspaper circulating in the district of the local authority.

(5.) The validity or effect of an order of the Board, licence, or other instrument issued by the Board shall not be affected by want of or defect or irregularity in any publication thereof.

Yearly return to Parliament.

50. The Board of Agriculture shall make and lay before both Houses of Parliament not later than the thirty-first day of March in each year, a return stating the proceedings and expenditure under this Act of the Board, and, as far as reasonably may be, of all local authorities, in the year ending the thirty-first day of December then last; and showing the number of foreign animals landed and found diseased in that year, specifying separately the different kinds of disease, and the ports of exportation and landing, and the mode of disposal of the animals; and containing such other information respecting the operation of this Act as the Board think fit.

Offences and Legal Proceedings.

Penalties for offences.

51. If any person is guilty of an offence against this Act, he shall for every such offence be liable—

(i) to a fine not exceeding twenty pounds; or

(*l*) As to the effect of this provision, see *Baker* v. *Williams*, [1898] 1 Q. B. 23; 66 L. J. Q. B. 880; 77 L. T. (N.S.) 495; 46 W. R. 64; 62 J. P. 21; 14 T. L. R. 13.

(ii) if the offence is committed with respect to more than four animals, to a fine not exceeding five pounds for each animal; or

(iii) where the offence is committed in relation to carcases, fodder, litter, dung, or other thing (exclusive of animals), to a fine not exceeding ten pounds in respect of every half ton in weight thereof after one half ton, in addition to the first fine of not exceeding twenty pounds.

General offences.

52. If any person, without lawful authority or excuse, proof whereof shall lie on him, does any of the following things, he shall be guilty of an offence against this Act:

(i) if he does anything in contravention of this Act, or of an order of the Board of Agriculture, or of a regulation of a local authority; or

(ii) if, where required by this Act or by an order of the Board to keep an animal separate as far as practicable, or to give notice of disease with all practicable speed, he fails to do so; or

(iii) if he fails to give, produce, observe, or do any notice, licence, rule, or thing which by this Act, or by an order of the Board, or by a regulation of a local authority, he is required to give, produce, observe, or do; or

(iv) if he does anything which by this Act or an order of the Board is made or declared to be not lawful; or

(v) if he does or omits anything, the doing or omission whereof is declared by this Act or by an order of the Board to be an offence by him against this Act; or

(vi) if he refuses to an inspector or other officer, acting in execution of this Act, or of an order of the Board, or of a regulation of a local authority, admission to any land, building, place, vessel, pen, vehicle, or boat which the inspector or officer is entitled to enter or examine, or obstructs or impedes him in so entering or examining, or otherwise in any respect obstructs or impedes an inspector or constable or other officer in the execution of his duty, or assists in any such obstructing or impeding; or

(vii) if he throws or places, or causes or suffers to be thrown or placed, into or in any river, stream, canal, navigation, or other water, or into or in the sea within three miles of the shore, the carcase of an animal which has died of disease, or been slaughtered as diseased or suspected;

and on a further conviction within a period of twelve months for a second or subsequent offence against the same sub-section of this section he shall be liable, in the discretion of the court, to be imprisoned for any term not exceeding one month, with or without hard labour, in lieu of the fine to which he is liable under this Act.

Sect. 53 (1).

Imprisonment instead of fine for use of expired licences, digging up of carcases, and other specified offences.

53.—(1.) If any person does any of the following things, he shall be guilty of an offence against this Act:

(i) if, with intent to unlawfully evade this Act, or an order of the Board of Agriculture, or a regulation of a local authority, he does anything for which a licence is requisite under this Act, or an order of the Board, or a regulation of a local authority, without having obtained a licence: or

(ii) if, where a licence is requisite, having obtained a licence, he, with the like intent, does the thing licensed after the licence has expired: or

(iii) if he uses or offers or attempts to use as such a licence an instrument not being a complete licence, or an instrument untruly purporting or appearing to be a licence, unless he shows to the satisfaction of the court that he did not know of that incompleteness or untruth, and that he could not with reasonable diligence have obtained knowledge thereof: or

(iv) if, with intent to unlawfully evade this Act, or an order of the Board of Agriculture, or a regulation of a local authority, he alters, or falsely makes, or ante-dates, or counterfeits, or offers or utters, knowing the same to be altered, or falsely made, or ante-dated, or counterfeited, a licence, declaration, certificate, or instrument made or issued, or purporting to be made or issued, under or for any purpose of this Act, or of an order of the Board or of a regulation of a local authority: or

(v) if, for the purpose of obtaining a licence, certificate, or instrument, he makes a declaration or statement false in any material particular, unless he shows to the satisfaction of the court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof: or

(vi) if he obtains or endeavours to obtain such a licence, certificate, or instrument by means of a false pretence, unless he shows to the satisfaction of the court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof: or

(vii) if he grants or issues such a licence, certificate, or instrument, being false in any date or other material particular, unless he shows to the satisfaction of the court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof, or if he grants or issues such a licence, certificate, or instrument, having, and knowing that he has, no lawful authority to grant or issue the same: or

(viii) if, with intent to unlawfully evade or defeat this Act, or an order of the Board, or a regulation of a local authority, he grants or issues an instrument being in form a licence,

certificate, or instrument made or issued under this Act or an order of the Board or a regulation of a local authority, for permitting or regulating the movement of a particular animal, or the doing of any other particular thing, but being issued in blank, that is to say, not being before the issue thereof so filled up as to specify any particular animal or thing: or Sect. 53 (1)

(ix) if he uses or offers or attempts to use for any purpose of this Act, or of an order of the Board, or of a regulation of a local authority, an instrument so issued in blank, unless he shows to the satisfaction of the court that he did not know of it having been so issued in blank, and that he could not with reasonable diligence have obtained knowledge thereof: or

(x) if he by means of any fraud or false pretence obtains, or attempts to obtain, compensation from the Board or a local authority in respect of an animal slaughtered, or aids or abets any person in any such fraud or false pretence: or

(xi) if, without lawful authority or excuse, proof whereof shall lie on him, he digs up, or causes to be dug up, a carcase buried under the direction of the Board or of a local authority or of a receiver of wreck: or

(xii) if, where the Board has by order prohibited, absolutely or conditionally, the use for the carrying of animals, or for any purpose connected therewith, of a vessel, vehicle, or pen, or other place, he, without lawful authority or excuse, proof whereof shall lie on him, does anything so prohibited;

(2.) And in every case in this section specified he shall be liable, on conviction, in the discretion of the court, to be imprisoned for any term not exceeding two months, with or without hard labour, in lieu of the fine to which he is liable under this Act.

Proceedings in court of summary jurisdiction.

54. Any offence against this Act may be prosecuted, and any fine in respect thereof may be recovered, and any money by this Act or an order of the Board of Agriculture made recoverable summarily may be recovered, and any summary orders under this Act or an order of the Board may be made in manner provided by the Summary Jurisdiction Acts; but nothing in this section shall apply to proceedings under the Customs Acts.

Appeal.

55. If any person thinks himself aggrieved by the dismissal of a complaint by, or by any determination or adjudication of, a court of summary jurisdiction under this Act, he may appeal therefrom to a court of quarter sessions.

Proceedings under Customs Acts for unlawful landing or shipping.

56.—(1.) If any person lands or ships or attempts to land or ship an animal or thing in contravention of this Act or of an order of the Board of Agriculture, he shall be liable, under and according to the Customs Acts, to the penalties imposed on persons importing or exporting or attempting to import or export goods the importation or exportation whereof is prohibited by or under the Customs Acts,

Sect. 56 (1).

without prejudice to any proceeding against him under this Act for an offence against this Act.

(2.) The animal or thing in respect whereof the offence is committed shall be forfeited under and according to the Customs Acts in like manner as goods the importation whereof is prohibited by or under the Customs Acts.

General provision as to procedure.

57.—(1.) Where the owner or person in charge of an animal is charged with an offence against this Act relative to disease or to any illness of the animal, he shall be presumed to have known of the existence of the disease or illness, unless and until he shows to the satisfaction of the court that he had not knowledge thereof, and could not with reasonable diligence have obtained that knowledge.

(2.) Where a person is charged with an offence against this Act in not having duly cleansed or disinfected any place, vessel, vehicle, or thing belonging to him or under his charge, and a presumption against him on the part of the prosecution is raised, it shall lie on him to prove the due cleansing and disinfection thereof.

(3.) A person charged with an offence against this Act may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon he may give evidence in the same manner and with the like effect and consequences as any other witness.

(4.) Every offence against this Act shall be deemed to have been committed, and every cause of complaint or matter for summary proceeding under this Act or an order of the Board of Agriculture or regulation of a local authority shall be deemed to have arisen, either in any place where the same actually was committed or arose, or in any place where the person charged or complained of or proceeded against happens to be at the time of the institution or commencement of the charge, complaint, or proceeding.

(5.) Notwithstanding anything in any Act relating to the metropolitan police or to municipal corporations or in any other Act, such part not exceeding one half of every fine or forfeiture recovered under this Act (except in proceedings under the Customs Acts) as the court before which it is recovered thinks fit, shall be paid to the person who proceeds for the same, and the residue thereof shall be applied as if this section had not been enacted.

Miscellaneous.

Local authority and local rate in Hove.

58. Notwithstanding anything in this Act the Hove Improvement Act Commissioners shall be the local authority for the Improvement Act District of Hove, and the local rate for that district shall be the rate applicable by the Commissioners to the maintenance of the police, and this Act shall apply to that district as if it were a borough and as if the said Commissioners were the council of the borough.

59.—(1.) In this Act, unless the context otherwise requires, the following terms have the meanings herein-after respectively assigned to them, that is to say : **Sect. 59 (1).** Interpretation and construction.

the expression "cattle" means bulls, cows, oxen, heifers, and calves :

the expression "animals" means, except where it is otherwise expressed, cattle, sheep, and goats, and all other ruminating animals, and swine :

the expression "disease" means cattle plague (that is to say, rinderpest, or the disease commonly called cattle plague), contagious pleuro-pneumonia of cattle (in this Act called pleuro-pneumonia), foot-and-mouth disease, sheep-pox, sheep-scab, or swine-fever (that is to say, the disease known as typhoid fever of swine, soldier purples, red disease, hog cholera or swine-plague) :

the expression "diseased" means affected with disease :

the expression "suspected" means suspected of being diseased :

the expression "carcase" means the carcase of an animal, and includes part of a carcase, and the meat, bones, hide, skin, hoofs, horns, offal, or other part of an animal, separately or otherwise, or any portion thereof :

the expression "fodder" means hay or other substance commonly used for food of animals :

the expression "litter" means straw or other substance commonly used for bedding or otherwise for or about animals :

the expression "foreign" applied to animals and things, means brought to the United Kingdom from a country out of the United Kingdom :

the expression "inspector of the Board of Agriculture" or "inspector of a local authority" means a person appointed to be an inspector for purposes of this Act by the Privy Council or the Board of Agriculture, or by a local authority, as the case may be ; and the expression "inspector," used alone, means such a person, by whichever authority appointed :

the expression "veterinary inspector" means an inspector being a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Board of Agriculture :

the expressions "police area" and "police force" with respect to the City of London mean the said city and the police thereof, and with respect to any other place have the same meaning as in the Police Act, 1890 : 53 & 54 Vict. c. 45.

the expression "district," when used with reference to a local authority, means the area for which the local authority exercises powers under this Act (*m*) :

(*m*) See s. 3, *ante*, p. 669.

Sect. 59 (1).

39 & 40 Vict. c. 36.

the expression "the Customs Acts" means the Customs Consolidation Act, 1876, and any enactment amending or substituted for that Act:

the expression "justice" means justice of the peace:

the expression "railway company" includes a company or person working a railway under lease or otherwise:

the expression "Order of Council" means an Order of the Privy Council under the Contagious Diseases (Animals) Acts, 1875 to 1886:

the expression "order of the Board of Agriculture" means an order made by the Board of Agriculture under this Act or under any enactment by this Act repealed.

(2.) In the computation of time for purposes of this Act, a period reckoned by days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

Special Provisions as to Scotland (n).

Special Provisions as to Ireland (o).

Supplemental.

Repeal of enactments in schedule.

78.—(1.) The Acts specified in the Fifth Schedule to this Act are hereby repealed to the extent specified in the third column to that schedule.

(2.) Notwithstanding such repeal, every Order of Council and in Council, and every order of the Board of Agriculture, or regulation of a local authority made, and every licence granted, and every committee or sub-committee constituted, and every inspector appointed, under any of the enactments repealed, shall continue and be as if this Act had not been passed; but so that the same may be revoked, altered, cancelled, or otherwise dealt with under this Act, as if it had been made, done, or granted under this Act.

Short title.

79. This Act may be cited as the Diseases of Animals Act, 1894.

SCHEDULES.

FIRST SCHEDULE.

Part I.

Pleuro-Pneumonia.

1. Cattle shall not be moved into or out of a place infected with pleuro-pneumonia, except where, as regards movement into such a place, the cattle

(n) Sections 60 to 64 inclusive relate to Scotland only.
(o) Sections 65 to 77 inclusive relate to Ireland only.

are affected with pleuro-pneumonia, and except in such other cases as the Board of Agriculture think fit by order to except. **Schedule 1.**

2. In the cases so excepted by order cattle may be moved into or out of an infected place on conditions prescribed by order of the Board, and not otherwise.

3. Cattle may be moved into, within, or out of such parts of an area infected with pleuro-pneumonia as are not comprised in a place infected with pleuro-pneumonia, by licence of the local authority, granted on conditions prescribed by order of the Board, and not otherwise.

PART II.

Foot-and-Mouth Disease.

1. Animals shall not be moved into or out of a place infected with foot-and-mouth disease except where, as regards movement into such a place, the animals are affected with foot-and-mouth disease, and except in such other cases as the Board of Agriculture think fit by order to except.

2. In the cases so excepted by order animals may be moved into or out of an infected place on conditions prescribed by order of the Board, and not otherwise.

3. Animals may be moved into, within, or out of such parts of an area infected with foot-and-mouth disease as are not comprised in a place infected with foot-and-mouth disease, by licence of the local authority, granted on conditions prescribed by order of the Board, and not otherwise.

SECOND SCHEDULE.

Sections 18, 73.

REGULATIONS AS TO CATTLE PLEURO-PNEUMONIA ACCOUNTS.

1. Notwithstanding anything in this Act the moneys provided by Parliament towards defraying the cost of the execution of the provisions of this Act relating to the slaughter by the Board of Agriculture or the Lord Lieutenant and Privy Council of cattle, animals, or swine, on account of pleuro-pneumonia, foot-and-mouth disease, or swine-fever, may be apportioned between Great Britain and Ireland in such manner as the Treasury in communication with the Board and the Lord Lieutenant may direct.

2. At the end of every financial year, accounts of the receipts and expenditure of the Cattle Pleuro-pneumonia Account for Great Britain and the Cattle Pleuro-pneumonia Account for Ireland shall be made up in such form and with such particulars as may be directed by the Treasury, and such accounts shall be audited by the Comptroller and Auditor-General as public accounts in accordance with such regulations as the Treasury may make, and shall be laid before Parliament, together with his report thereon.

3. If at the end of any financial year the Treasury, after communication with the Board of Agriculture, or the Lord Lieutenant and Privy Council, as the case may be, are satisfied that the balance standing to the credit of either of the said Cattle Pleuro-pneumonia Accounts, or any part of such balance, will not be required for the purposes of this Act, they may—

(a) in the case of the Cattle Pleuro-pneumonia Account for Great Britain direct such balance or part to be paid in the proportions provided by this Schedule into the Local Taxation Account (*p*) and the Local Taxation (Scotland) Account, in repayment of any sums which have

(*p*) See note (*s*) *ante*, p. 679.

Schedule 2.

been paid to the Cattle Pleuro-pneumonia Account out of the said Local Taxation Accounts; and

(b) in the case of the Cattle Pleuro-pneumonia Account for Ireland, direct such balance or part to be paid into the general account of the General Cattle Diseases Fund in repayment of any sums which have been paid out of the said general account for any of the purposes to which the Cattle Pleuro-pneumonia Account is by this Act applicable;

and in either case the Treasury may direct any balance or part which may not be required for such repayment to be paid into the Exchequer.

4. The proportions in which any sum is to be paid out of or into the Local Taxation Account and the Local Taxation (Scotland) Account under this Act shall be eighty-eight per centum of such sum out of or into the Local Taxation Account, and twelve per centum out of or into the Local Taxation (Scotland) Account.

5. All money paid under this Act out of or into the Local Taxation Account shall in account be charged against or credited to the proceeds of the probate duty (*q*).

6. All moneys paid under this Act out of or into the Local Taxation (Scotland) Account shall in account be charged against or credited to the residue of the Scotch share of the local taxation (customs and excise) duties in manner provided by section two of the Local Taxation (Customs and Excise) Act, 1890.

53 & 54 Vict. c. 60.

7. Payments out of or into the said Cattle Pleuro-pneumonia Accounts, and all other matters relating to the accounts and to the moneys standing to the credit of the accounts shall be made and regulated in such manner as the Treasury direct.

THIRD SCHEDULE.

Sections 24, 26, 27.

Foreign Animals.

Part I.

Slaughter at Port of Landing.

1. The animals shall be landed only at a part of a port defined for that purpose by order of the Board of Agriculture, to be called a foreign animals wharf.

2. The animals shall be landed in such manner, at such times, and subject to such supervision and control as the Commissioners of Customs direct.

The animals shall not be moved alive out of the wharf.

Part II.

Quarantine.

1. The animals shall be landed only at a part of a port defined for that purpose by order of the Board of Agriculture, to be called a foreign animals quarantine station.

2. The animals shall be landed in such manner, at such times, and subject to such supervision and control as the Commissioners of Customs direct, and subject to such conditions in respect of the animals, or of the vessel from which they are landed, as the Board by order prescribe.

(*q*) See the Local Government Act, 1888, s. 21, *ante*, p. 48.

3. When landed the animals shall be placed in sheds or other receptacles in the quarantine station, prepared by the local authority or the owners of the quarantine station, or the consignees of animals, or other persons, and approved by the Board.

4. The animals shall not be moved out of the quarantine station except on conditions prescribed by order of the Board.

5. Notwithstanding anything in the foregoing provisions of this part of this Schedule the provisions of this Act relating to slaughter in case of the existence of disease, and to compensation or other payment in respect of animals so slaughtered, and to the ownership of carcases of such animals, shall apply to animals within a foreign animals quarantine station.

FOURTH SCHEDULE.

Section 30.

COMMITTEES OF LOCAL AUTHORITIES.

1. Every local authority shall form and keep up a committee or committees, and may appoint the number of members by whom the powers of a committee may be exercised, and may at any time add to or diminish the number of the members of a committee, or otherwise alter the constitution thereof, and fill up or provide for the filling up of vacancies therein, or revoke the appointment thereof and appoint another committee or committees, and lay down rules for the guidance of a committee, who shall act accordingly.

2. A committee may consist wholly of members of the local authority or partly thereof, and partly of other persons, being rated occupiers in the district of the local authority, and otherwise qualified, as the local authority think fit.

3. A local authority may except in so far as it is otherwise provided by order of the Board of Agriculture delegate all or any of their powers, except the power to make a rate, to a committee, with or without conditions or restrictions (*r*).

4. A local authority may revoke or alter any power given by them to a committee.

5. A local authority may, if they think fit, appoint and designate one committee as their executive committee.

6. An executive committee shall have all the powers of the local authority, except the power to make a rate, and may, if they think fit, appoint a sub-committee or sub-committees, and delegate to them [except in so far as it is otherwise provided by order of the Board] all or any of the powers of the executive committee, with or without conditions or restrictions, and revoke or alter any such delegation, and appoint the number of members by whom the powers of a sub-committee may be exercised, and add to or diminish the number of the members of a sub-committee, or otherwise alter the constitution thereof, and fill up or provide for the filling up of vacancies therein, or revoke the appointment thereof and appoint another sub-committee or other sub-committees, and lay down rules for the guidance of a sub-committee who shall act accordingly.

7. Proceedings of a committee or sub-committee shall not be invalidated by any vacancy in the committee or sub-committee.

8. In case of the formation of two or more committees, they shall act according to rules laid down for their guidance by the local authority.

(*r*) See *Huth* v. *Clarke*, *ante*, p. 64.

Schedule 4.

9. A committee, and a sub-committee of an executive committee, may elect a chairman of their meetings.

10. If no chairman is elected, or if the chairman so elected is not present at the time appointed for a meeting, the members then present shall choose a chairman for that meeting.

11. A committee or sub-committee may meet and adjourn as they think proper.

12. Every question at a meeting of a committee or sub-committee shall be determined by a majority of the votes of the members, including the chairman, present and voting on the question; and in case of equal division, the chairman shall have a second vote.

FIFTH SCHEDULE.

Section 78.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
41 & 42 Vict. c. 74. -	The Contagious Diseases (Animals) Act, 1878.	The whole Act, except section thirty-four.
47 & 48 Vict. c. 13. -	The Contagious Diseases (Animals) Act, 1884.	The whole Act.
47 & 48 Vict. c. 47. -	The Contagious Diseases (Animals) Transfer of Parts of Districts Act, 1884.	The whole Act.
49 & 50 Vict. c. 32. -	The Contagious Diseases (Animals) Act, 1886.	The whole Act, except section nine.
52 & 53 Vict. c. 30. -	The Board of Agriculture Act, 1889 -	Section three.
53 & 54 Vict. c. 14. -	The Contagious Diseases (Animals) (Pleuro-pneumonia) Act, 1890.	The whole Act.
55 & 56 Vict. c. 47. -	The Contagious Diseases (Animals) Act, 1892.	The whole Act.
56 & 57 Vict. c. 43. -	The Contagious Diseases (Animals) Act, 1893.	The whole Act.

SHOP HOURS ACT, 1895.

(58 VICT. CAP. 5.)

An Act to amend the Shop Hours Act, 1892 (*s*). [9th April 1895.]

* * * * *

Penalty on failure to comply with 55 & 56 Vict. c. 62, s. 4.

1. If any employer fails to keep exhibited the notice required by section four of the Shop Hours Act, 1892, in manner required by that section, he shall be liable to a fine not exceeding forty shillings (*t*).

(*s*) See the Acts of 1892 and 1893, *ante*, pp. 570 and 584.

(*t*) Under s. 4 of the Act of 1892 (*ante*, p. 571) an employer of young persons is bound to exhibit in a conspicuous place in his shop a notice referring to that Act, and stating the number of hours in the week during which a young person may be lawfully employed in his shop. This Act, however, omitted to provide a penalty for the neglect to exhibit the notice. See *Hammond* v. *Pulsford*, [1895] 1 Q. B. 223; 64 L. J. M. C. 63; 71 L. T. (N.S.) 767; 43 W. R. 236; 59 J. P. 533. This defect is remedied by the text.

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Short title and construction.

2. This Act may be cited as the Shop Hours Act, 1895, and shall be construed as part of the Shop Hours Act, 1892, and the Shop Hours Acts, 1892 and 1893, and this Act may be cited collectively as the Shop Hours Acts, 1892 to 1895.

LOCAL GOVERNMENT (STOCK TRANSFER) ACT, 1895.

(58 & 59 Vict. Cap. 32.)

An Act to amend the Local Government Act, 1894, *so far as regards the transfer of any stock, share, or security standing in the name of, or dividends payable to, a local authority.* [6th July 1895.]

* * * * *

Alteration of name on transfer of stock standing in the name of local authority. 56 & 57 Vict. c. 73. 51 & 52 Vict. c. 41.

1.—(1.) Where any stock is standing in the books of any company in the name of any local authority the following provisions shall have effect :—

(a.) If by virtue of the Local Government Act, 1894, or anything done under that Act or the Local Government Act, 1888, the name of the local authority is changed (*u*), then upon the request of such authority and the production of a statutory declaration by the clerk of the authority specifying the stock, and verifying the change of name and identity of the authority, the company shall enter such stock in the new name of the local authority in like manner as if the stock had been transferred to the authority under that name, and pay to that authority all dividends accrued and to accrue due thereon :

(b.) If by virtue of the Local Government Act, 1894, or anything done under that Act or the Local Government Act, 1888, any other local authority becomes entitled to the stock or any dividends thereon, a certificate of the clerk of the county council, or the order or award (*x*) under which the local authority becomes so entitled, shall be a sufficient authority to the company to transfer the stock into the name of the local authority specified in that behalf in the order, award, or certificate, and to pay the dividends to such authority :

(c.) If in any other case any other local authority is entitled to the stock or any dividends thereon, the court may on application make an order vesting in such authority or person as the court may direct, the right to transfer the

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(*u*) See ss. 57 and 59 of the Local Government Act 1888, and ss. 21, 36 and 55 of the Local Government Act, 1894, *ante*.

(*x*) For instance an order of a county council altering an area and establishing a new local authority under ss. 57 and 59 of the Act of 1888, *ante*, pp. 111, 114 ; or an award under s. 62 of that Act, *ante*, p. 119 ; or s. 68 of the Act of 1894, *ante*, p. 647.

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said stock, or pay such dividends, to the authority in or to whom the same ought to be vested or paid, and the Trustee Act, 1893, shall apply in like manner as if the vesting order where made under section thirty-five of that Act.

56 & 57 Vict. c. 53.

(2.) In this Act—

"A local authority" includes any urban or rural sanitary authority, council of a borough, improvement commissioners, local board, urban district council, rural district council, board of guardians, highway board, burial board, parish council, overseers, churchwardens and overseers, and chairman of a parish meeting and overseers:

"County council" includes the council of a county borough:

"Order of a county council" (*y*) means an order made either by a county council or by any joint committee of county councils, and, if such order requires confirmation by the Local Government Board, means the order as confirmed by that Board:

"Company" includes the Bank of England, and any company or person keeping books in which any stock is registered:

"Stock" includes any share, annuity, or other security.

(3.) The jurisdiction of the court under this Act may be exercised by the High Court, or in cases within the jurisdiction of a palatine court or county court, by that court.

Short title.

2. This Act may be cited as the Local Government (Stock Transfer) Act, 1895.

LOCAL GOVERNMENT (ELECTIONS) ACT, 1896.

(59 Vict. Cap. 1) (*z*).

An Act to continue temporarily certain Powers for the Removal of Difficulties at Elections under the Local Government Act, 1894.

[6th March 1896.]

* * * * *

Power of county council to remove difficulties.

1.—(1.) If any difficulty arises with respect to any election of parish or district councillors or of guardians, or to the first meeting after any ordinary election of such councillors or guardians, or if, from an election not being held, or being defective, or otherwise, the council or board has not been properly constituted, the county council

(*y*) It is remarkable that this expression does not occur in this Act; no doubt an order such as is referred to in s. 1 (1) (b) is intended.

(*z*) This Act is substantially a re-enactment of s. 80, sub-s. (1) of the Local Government Act, 1894, which applied to the first elections only. See also as to the powers of county councils to remove difficulties at elections under the Local Government Act, 1894, ss. 47 (5), 48 (5), and 59 (5), *ante*, pp. 636, 638, 643.

may by order make any appointment or do anything which appears to them necessary or expedient for the proper holding of any such election or meeting, and properly constituting the council or board, and may, if it appears to them necessary, direct the holding of an election or meeting, and fix the dates for any such election or meeting. Sect. 1 (1)

(2.) Any such order may modify the provisions of the Local Government Act, 1894, and the enactments applied by, or rules framed under, that Act, so far as may appear to the county council necessary or expedient for carrying the order into effect. 56 & 57 Vict. c. 73.

(3.) A county council may delegate their powers under this section to a committee.

2. This Act shall continue in force until the thirty-first day of December, one thousand eight hundred and ninety-seven, and no longer, unless continued by Parliament (*a*). Duration.

3. This Act may be cited as the Local Government (Elections) Act, 1896. Short title.

LOCAL GOVERNMENT (DETERMINATION OF DIFFERENCES) ACT, 1896.

(59 Vict. Cap. 9) (*b*).

An Act to amend certain Provisions of the Local Government Act, 1888, with respect to the Determination of Differences by the Local Government Board. [21st May 1896.]

* * * * *

1. The Local Government Act, 1888, shall have effect, as if in sub-sections three and four of section eleven of that Act for the words "be determined by arbitration of the Local Government Board," and in sub-section nine of the same section for the words "be referred to the arbitration of the Local Government Board," were substituted the words "be determined by the Local Government Amendment of 51 & 52 Vict. c. 44, s. 11, as to determination of differences.

(*a*) This Act was continued to December 31st, 1898, by the Expiring Laws Continuance Act, 1897 (60 & 61 Vict. c. 54).

(*b*) This Act appears to have been passed in consequence of the decision in *Re Kent County Council* v. *Sandgate Local Board*, [1895] 2 Q. B. 43; 64 L. J. Q. B. 502; 72 L. T. (N.S.) 725; 43 W. R. 601; 59 J. P. 456; in which it was held that where differences are directed by the Local Government Act, 1888, to be determined by arbitration of the Local Government Board, the board must proceed under s. 63 of that Act, with the consequence that they, or the arbitrator appointed by them, may be compelled under the Arbitration Act, 1889 (52 & 53 Vict. c. 49) s. 24 to state a case for the opinion of the court. This Act makes it optional for the Board in determining differences as to the amount of payments to be made by local authorities and other matters in respect of highways under s. 11 of the Act of 1888 to act as arbitrators or not. If they do not so act they can determine the difference by means of a local inquiry under s. 87 of that Act, and this order made after the inquiry will (under s. 295 of the Public Health Act 1875, which is incorporated by s. 87) be binding and conclusive.

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Board either as arbitrators or otherwise at the option of the Board," and as if in section sixty-three of that Act for the words " are required in pursuance of this Act to decide," were inserted the words " determine as arbitrators."

Validation of past orders.

2. An order of the Local Government Board made before the passing of this Act and purporting to have been made for the determination of any matter under section eleven of the Local Government Act, 1888, shall not be invalid by reason only of the Board having determined the matter as arbitrators or otherwise, instead of appointing an arbitrator to determine it.

Short title.

3. This Act may be cited as the Local Government (Determination of Differences) Act, 1896.

DISEASES OF ANIMALS ACT, 1896.

(59 & 60 Vict. Cap. 15.)

An Act to amend the Diseases of Animals Act, 1894 (*c*).

[20th July 1896.]

* * * * *

Slaughter of foreign animals. 57 & 58 Vict. c. 57.

1.—(1.) For section twenty-four of the Diseases of Animals Act, 1894, shall be substituted the following section, namely :—

" The provisions set forth in Part I. (slaughter at port of landing) of the Third Schedule to this Act shall apply to all foreign animals other than—

(a) foreign animals the landing of which is for the time being prohibited by order of the Board of Agriculture; and

(b) foreign animals intended for exhibition or other exceptional purposes, and the landing of which is allowed for the time being by the Board, subject to the provisions of Part II. (quarantine) of the Third Schedule to this Act."

(2.) Section twenty-six of the Diseases of Animals Act, 1894, is hereby repealed.

Commencement of Act.

2. This Act shall come into operation on the first day of January next after the passing thereof.

Short title and construction.

3. This Act may be cited as the Diseases of Animals Act, 1896, and shall be construed as one with the Diseases of Animals Act, 1894, and that Act and this Act may be cited together as the Diseases of Animals Acts, 1894 and 1896.

(*c*) See this Act, *ante*, p. 669.

AGRICULTURAL RATES ACT, 1896.

(59 & 60 VICT. CAP. 16) (*d*).

An Act to amend the Law with respect to the Rating of Occupiers of Agricultural Land in England, and for other purposes connected therewith. [20th July 1896.]

* * * * *

Exemption of agricultural land from half of rates to which this Act applies.

1.—(1.) During the continuance of this Act, that is to say, the period of five years after the thirty-first day of March next after the passing of this Act, the occupier of agricultural land in England shall be liable in the case of every rate to which this Act applies, to pay one half only of the rate in the pound payable in respect of buildings and other hereditaments (*e*).

(2.) This Act shall apply to every rate as defined by this Act, except a rate—

(a) which the occupier of agricultural land is liable, as compared with the occupier of buildings or other hereditaments, to be assessed to or to pay in the proportion of one half or less than one half, or

(b) which is assessed under any commission of sewers or in respect of any drainage, wall, embankment, or other work for the benefit of the land.

Payment out of Local Taxation Account in respect of deficiency arising from exemption.

2.—(1.) In respect of the deficiency which will arise from the provisions of this Act in the produce of rates made by the spending authorities in England, as hereinafter defined, there shall during the continuance of this Act—

(a) be paid to the Local Taxation Account (*f*) an annual sum (in this Act referred to as the annual grant) of such amount as is certified under the provisions hereinafter contained; and

(b) be issued from the Local Taxation Account by half-yearly payments out of the annual grant to each such spending

(*d*) The object of this Act is to make the occupier of agricultural land liable, in the case of certain rates, to the payment on one half only of the rate in the pound payable in respect of buildings and other hereditaments. Amongst the rates to which the Act applies is the county rate leviable by a county council under the County Rate Act, 1852 (15 & 16 Vict. c. 81), and the Local Government Act, 1888, s. 3 (i), *ante*, p. 5. The deficiency caused by the relief of agricultural land from half the rate, is made up to the spending authorities (including county councils) by means of half-yearly payments made out of an annual grant from the proceeds of the estate duty on personal property to the Local Taxation Account. The Act provides machinery for ascertaining the amount of the annual grant (viz., the total deficiency throughout England), payable to the Local Taxation Account and the share of that grant payable to each spending authority in respect of the deficiency arising in the produce of the rates of that authority. The Act is temporary only; see s. 1 (1). It is fully treated in a work by Mr. Walter C. Ryde, 2nd edition, 1896.

(*e*) The definition of "agricultural land," *post*, s. 9, includes "market gardens," but it has been held in a recent case that as to glass-houses erected in a market garden, the occupier is liable to pay the full rate: *Smith* v. *Richmond*, [1898] 1 Q. B. 683, *per* LINDLEY, M.R., and RIGBY, L.J. (VAUGHAN WILLIAMS, L.J., *diss.*), reversing the decision of COLLINS, J. (RIDLEY, J., *diss.*), 77 L. T. (N.S.) 161; 61 J. P. 710.

(*f*) As to the Local Taxation Account, see the Local Government Act, 1888, ss. 20 *et seq.*, *ante*, p. 46.

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authority a share of that grant of such amount as is certified under the provisions hereinafter contained.

(2.) The Commissioners of Inland Revenue, in such manner, by such payments, and under such regulations, as the Treasury direct, shall pay to the Local Taxation Account, out of the proceeds of the estate duty (*ff*) derived in England from personal property, the annual sum required by this section to be paid to that account.

(3.) The first of those payments shall be made during the six months ending on the thirty-first day of March next after the passing of this Act, so as to make up a half-yearly payment to meet the issues to spending authorities on account of the six ensuing months.

Contributions from more than one parish.

3.—(1.) Where any spending authority require in any half year or other period to raise from two or more parishes a sum by a rate to which this Act applies, they shall, in determining the net amount to be so raised, deduct the sum issuable to them in respect of the said rate on account of their share of the annual grant for the said half year or other period, and the net amount after that deduction shall, where it would otherwise be raised in proportion to the rateable value, be raised in proportion to the assessable value of those parishes.

(2.) For the purposes of this section the assessable value of a parish shall be the rateable value thereof reduced by an amount equal to one half of the rateable value of the agricultural land in the parish (*g*).

Certifying of annual sums payable in respect of deficiency.

4.—(1.) The Local Government Board shall, as soon as may be after the passing of this Act, certify the amount—

(a) of the annual grant to be paid to the Local Taxation Account; and

(b) of the share of such grant to be paid annually to each spending authority,

under this Act, and for that purpose shall determine in the prescribed manner the amount which for the purposes of this Act is to be taken as having been raised during the last year before the passing of this Act by any rate to which this Act applies for the expenditure of each spending authority.

(2.) Such proportion of the whole amount so taken to be raised in respect of any hereditaments or parishes as the Local Government Board estimate to be the proportion of the total rateable value of those hereditaments or parishes which represents the value of agricultural land, shall be taken for the purposes of this Act as the amount raised during the said year, by the said authority, by the said rate, in respect of agricultural land, and one half of that amount shall be taken as the deficiency which will arise from the provisions of this Act in the produce of the said rate.

(*ff*) As to the estate duty, see s. 21 of the Local Government Act, 1888, and notes, *ante*, p. 48.

(*g*) The amount to be raised from the parishes in a county by the county rate will be determined upon the footing prescribed by this section.

(3.) A sum equal to the total amount of the deficiencies thus estimated for all the spending authorities in England shall be the amount of the annual grant, and a sum equal to the deficiency thus estimated in the case of each spending authority shall be the share of that spending authority in the annual grant, and the Local Government Board shall certify the same accordingly.

(4.) The Local Government Board, in acting under this section, shall obtain such information and make such inquiries, and in such manner as they think fit.

(5.) The Local Government Board may in case of error amend, or for the purpose of meeting any alteration in an area or authority to which a certificate relates may vary, a certificate under this section, and any such amendment or variation shall have effect from the date of the original certificate, or any later date fixed by the Board; but, save as aforesaid, a certificate shall be final and binding on all persons.

(6.) The Local Government Board may give provisional certificates, if they think necessary for the purpose of enabling the first payments to and out of the Local Taxation Account under this Act to be made, before they have sufficient information to enable them to give final certificates.

Separate statement in valuation lists, etc., of value of agricultural land.

5. In every valuation list and in the basis or standard for any county rate, and in any valuation made by the council of a borough or any other council for the purpose of raising the borough or other rate—

(a) where separate hereditaments are specified therein, the value of agricultural land shall be stated separately from that of any building or other hereditament; and

(b) in every case the total rateable value of the agricultural land in each parish shall be stated separately from the total rateable value of the buildings or other hereditaments in such parish; and whenever a copy of the total of the rateable value of any parish is required to be sent to any person (*h*), such copy shall state both the above-mentioned totals; and

(c) where any hereditament consists partly of agricultural land and partly of buildings, the gross estimated rental of the buildings, when valued separately, in pursuance of this Act, from the agricultural land shall, while the buildings are used only for the cultivation of the said land, be calculated not on structural cost, but on the rent at which they would be expected to let to a tenant from year to year, if they could only be so used; and the total gross estimated rental

(*h*) The basis or standard for the county rate is made according to the value of the rateable property in each parish. See notes to Local Government Act, 1888, s. 3 (i), *ante*, p. 5. A copy of the basis or standard (before it is confirmed) is sent to the overseers of each parish; County Rate Act, 1852, s. 13.

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of the hereditament shall not be increased by the said separate valuation.

Procedure for ascertaining deficiency and for separation of value of agricultural land from buildings and other hereditaments.

6.—(1.) For the purposes of this Act returns shall be made to the Local Government Board (*i*) in accordance with the prescribed regulations—

(a) by every spending authority in relation to the sums actually received by them or their predecessors during the year next before the passing of this Act from any rate to which this Act applies; and

(b) by every assessment committee or council whose duty it is to revise or make a valuation list, basis, standard or other valuation for any parish, in relation to the gross estimated rental and rateable value of that parish, and the proportion thereof which represents agricultural land; and

(c) by any such authority, committee, or council in relation to any other prescribed information.

(2.) For the purpose of the returns, statements showing the gross estimated rental and rateable value of the agricultural land in a parish, and, in the case of any hereditament separately valued which consists in part of agricultural land and in part of buildings or other hereditaments, of each such part, shall be made by the overseers of every parish, and corrected by the assessment committee, and sent to the surveyor of taxes, and be subject to objection or appeal by the said surveyor and overseers before the assessment committee, and the justices in special sessions, and the court of quarter sessions, and subject to the right of any aggrieved ratepayer to be heard upon the said appeal, in such form, within such times, and generally in such manner, and subject to such provisions, as may be prescribed. These provisions shall conform as nearly as circumstances will permit to the existing statutory law respecting valuation lists, as regards notices, rights to inspect and take extracts, the hearing of objections, and otherwise.

(3.) The Local Government Board may by order make regulations for the purpose of this section, and also generally for carrying into effect this Act, and those regulations shall be laid before both Houses of Parliament, and if neither House of Parliament within ten days passes a resolution adverse to the said order, they shall be binding in law until varied in the same manner, shall have effect as if they were enacted in this Act, and shall amongst other matters provide—

(a) for fixing, with the concurrence of the Treasury, for the purpose of the division in the statements of agricultural land from buildings or other hereditaments, the minimum gross estimated rental and rateable value of the buildings or other hereditaments;

(*i*) The returns required by this section were sent to the Local Government Board in the year 1896, and this part of the section is now spent. They were made pursuant to an order of the Local Government Board, dated 28th July, 1896, which will be found in S. R. O., 1896, p. 497.

(b) for giving effect to a notice of objection or appeal by the surveyor of taxes unless it is proved that such notice is unfair or incorrect;

(c) for the temporary adoption by the county council or any other council, of the division in the return between the total rateable value of agricultural land and that of buildings and other hereditaments:

(d) for the alteration of the valuation list in accordance with the statements as finally settled and sending copies of the returns to spending authorities and for applying and adapting any statutory form or procedure respecting the valuation list or poor rate; and

(e) for adapting this Act to cases where there is no valuation list, or where a sum is raised by rate from an area not a parish.

(4.) The regulations may also provide fines for the breach thereof not exceeding forty shillings, or in case of any continuing offence not exceeding forty shillings a day during the continuance of the offence, and any such fine may be recovered as a Crown debt or to an amount not exceeding one hundred pounds before a court of summary jurisdiction.

As to spending authorities.

7.—(1.) Where the spending authority are a school board for a school district which is a parish, or the surveyors of highways, the amount which otherwise would be payable under this Act to the spending authority may be paid to the guardians of the poor law union in which the parish is situate, and, if so paid, shall be paid or credited by them to the spending authority.

(2.) Every sum paid under this Act out of the Local Taxation Account to any spending authority in respect of any rate, shall, for the purpose of its application, of account, and of audit, be deemed to have been raised by the said rate.

33 & 34 Vict. c. 75.

(3.) For the purposes of section ninety-seven of the Elementary Education Act, 1870, any amount paid or credited under this Act out of the local taxation account to a school board shall be deemed to have been actually paid by the rating authority, and the amount which would have been raised or been produced by a rate of threepence in the pound on the rateable value shall be calculated in like manner as if this Act had not passed.

As to limit of rate or expenditure in case of any local authority

8. A limit imposed by any enactment on a rate shall be construed as being only a limit on the amount to be raised by that rate, and where by that limit or otherwise the sum to be raised or expended by a local authority is limited by any enactment by reference to a rate, the limit shall be varied so as to enable the local authority to raise or expend the same sum as they might have done if this Act had not passed, and in the case of a spending authority receiving any sum paid under this Act out of the local taxation account in

Sect. 8.

respect of such rate that sum shall be deemed to be part of the sum raised thereby.

Definitions.

9. In this Act, unless the context otherwise requires :—

The expression "rate" means a rate made during the continuance of this Act, the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined :

The expression "rateable value" in the case of the county rate, or any other rate, levied according to any annual value not being rateable value as stated in the valuation list, means that annual value :

25 & 26 Vict. c. 103 ; 27 & 28 Vict. c. 39 ; 32 & 33 Vict. c. 67.

The expression "valuation list" means a valuation list under the Union Assessment Committee Acts, 1862 and 1864, or, in the metropolis, under the Valuation (Metropolis) Act, 1869 :

The expression "spending authority" means any of the local authorities in England mentioned in the schedule to this Act :

The expression "occupier" includes owner where the owner is rated in place of the occupier :

51 & 52 Vict. c. 41.

The expression "Local Taxation Account" has the same meaning as in the Local Government Act, 1888 (*k*) :

The expression "prescribed" means prescribed by order of the Local Government Board :

The expression "agricultural land" means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure-grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse :

The expression "cottage" means a house occupied as a dwelling by a person of the labouring classes :

The expression "year" means the local financial year, that is to say, the twelve months beginning on the first day of April, or where the spending authority do not make up their accounts to that day on the nearest day thereto to which they do make up their accounts, or on any other prescribed day.

Short title.

10. This Act may be cited as the Agricultural Rates Act, 1896.

(*k*) See s. 20 of that Act, *ante*, p. 46.

SCHEDULE.

Schedule.

SPENDING AUTHORITIES.

County councils, councils of county boroughs, councils of boroughs and other urban districts and of rural districts, boards of guardians, the receiver of the metropolitan police district, school boards, highway boards, surveyors of highways.

LOCOMOTIVES ON HIGHWAYS ACT, 1896.

(59 & 60 VICT. CAP. 36) (*l*).

An Act to amend the Law with respect to the Use of Locomotives on Highways. [14th August 1896.]

* * * * *

Exemption of light locomotives from certain statutory provisions.

1.—(1.) The enactments mentioned in the schedule to this Act, and any other enactment restricting the use of locomotives on highways and contained in any public general or local and personal Act in force at the passing of this Act, shall not apply to any vehicle propelled by mechanical power if it is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not to exceed in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause; and vehicles so exempted, whether locomotives or drawn by locomotives, are in this Act referred to as light locomotives.

Provided that—

(a) the council of any county or county borough shall have power to make bye-laws preventing or restricting the use such locomotives upon any bridge within their area (*m*), where such council are satisfied that such use would be attended with damage to the bridge or danger to the public:

(b) a light locomotive shall be deemed to be a carriage within the meaning of any Act of Parliament, whether public general or local, and of any rule, regulation, or bye-law,

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(*l*) This Act frees "light locomotives" (as defined by s. 1) from the restrictions imposed upon the use of locomotives by the enactments mentioned in the schedule. Restrictions upon the use of light locomotives are, however, imposed by this Act, and by the regulations of the Local Government Board made under it. The Act affects county councils as highway authorities in respect of main roads, and they are themselves empowered to make bye-laws under it as to the use of light locomotives upon bridges (s. 1 (1) (a)), and to make applications to the Local Government Board as to their use in particular places (s. 6 (2)).

(*m*) Apparently whether a "county bridge" or not. As to the penalty for a breach of the bye-law, see s. 7, *post*.

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made under any Act of Parliament, and, if used as a carriage of any particular class, shall be deemed to be a carriage of that class, and the law relating to carriages of that class shall apply accordingly.

(2.) In calculating for the purposes of this Act the weight of a vehicle unladen, the weight of any water, fuel, or accumulators, used for the purpose of propulsion, shall not be included.

Regulations as to lights.

2. During the period between one hour after sunset and one hour before sunrise, the person in charge of a light locomotive shall carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations to be made by the Local Government Board (*n*).

Locomotives to carry a bell.

3. Every light locomotive shall carry a bell or other instrument capable of giving audible and sufficient warning of the approach or position of the carriage.

Rate of speed.

4. No light locomotive shall travel along a public highway at a greater speed than fourteen miles an hour, or than any less speed that may be prescribed by regulations of the Local Government Board (*n*).

Use of petroleum, etc. 34 & 35 Vict. c. 105. 42 & 43 Vict. c. 47. 44 & 45 Vict. c. 67.

5. The keeping and use of petroleum or of any other inflammable liquid or fuel for the purpose of light locomotives shall be subject to regulations made by a Secretary of State, and regulations so made shall have effect notwithstanding anything in the Petroleum Acts, 1871 to 1881 (*o*).

Local Government Board regulations.

6.—(1.) The Local Government Board may make regulations (*n*) with respect to the use of light locomotives on highways, and their construction, and the conditions under which they may be used.

(2.) Regulations under this section may, if the Local Government Board deem it necessary, be of a local nature and limited in their application to a particular area, and may, on the application of any local authority, prohibit or restrict the use of locomotives for purposes of traction in crowded streets, or in other places where such use may be attended with danger to the public.

All regulations under this section shall have full effect notwithstanding anything in any other Act, whether general or local, or any bye-laws or regulations made thereunder.

Every regulation purporting to be made in pursuance of this section shall be forthwith laid before both Houses of Parliament.

Penalties.

7. A breach of any bye-law or regulation made under this Act, or of any provision of this Act, may, on summary conviction, be punished by a fine not exceeding ten pounds.

(*n*) Regulations of the Local Government Board under this Act were issued on November 9th, 1896. See these regulations and the circular to local authorities which accompanied them, *post*.

(*o*) Regulations under this section were made by the Secretary of State on November 3rd, 1896, and are set out in S. R. O., 1896, p. 173.

8.—(1.) On and after the first day of January next after the passing of this Act there shall be granted, charged, and paid in Great Britain for every light locomotive, which is liable to duty either as a carriage or as a hackney carriage under section four of the Customs and Inland Revenue Act, 1888, an additional duty of excise at the following rate; namely,— Sect. 8 (1). Excise duty on certain locomotives. 51 & 52 Vict. c. 8.

	£	s.	d.
If the weight of the locomotive exceeds one ton unladen, but does not exceed two tons unladen - - - - -	2	2	0
If the weight of the locomotive exceeds two tons unladen - - - - -	3	3	0

(2.) Every such duty shall be paid together with the duty on the licence for the locomotive as a carriage or hackney carriage, and shall in England be dealt with in manner directed with respect to duties on local taxation licences within the meaning of the Local Government Act, 1888 (*p*). * * * 51 & 52 Vict. c. 41.

9. The requirements of sub-section (4) of section twenty-eight of the Highways and Locomotives Amendment Act, 1878, may be from time to time varied by order of the Local Government Board. Construction of wheels of locomotives on roads.

10. * * * **11.** * * * (*q*).

12. This Act may be cited as the Locomotives on Highways Act, 1896, and shall come into operation on the expiration of three months from the passing thereof. Short title and commencement.

SCHEDULE.

ENACTMENTS WHICH ARE NOT TO APPLY TO LIGHT LOCOMOTIVES.

The Locomotives Act, 1861 (24 & 25 Vict. c. 70), except so much of section one as relates to tolls on locomotives, and sections seven and thirteen.

Section forty-one of the Thames Embankment Act, 1862 (25 & 26 Vict. c. 93).

The Locomotives Act, 1865 (28 & 29 Vict. c. 83).

The Locomotives Amendment (Scotland) Act, 1878 (41 & 42 Vict. c. 58).

Part II. of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77).

Section six of the Public Health (Ireland) Amendment Act, 1879 (42 & 43 Vict. c. 57).

(*p*) As to local taxation licences, see s. 20 of the Local Government Act 1888, *ante*, p. 46, and the First Schedule to that Act, *ante*, p. 203. Light locomotives will not require a licence from the county council under s. 32 of the Highways and Locomotives (Amendment) Act, 1878, that section being contained in Part II. of that Act. See s. 1 (1) of this Act, *ante*, p. 717.

The remainder of this section relates to Scotland only.

(*q*) Sections 10 and 11 relate to Scotland and Ireland respectively.

LIGHT RAILWAYS ACT, 1896.

(59 & 60 Vict. Cap. 48) (*q*).

An Act to facilitate the Construction of Light Railways in Great Britain. [14th August 1896.]

* * * * *

Establishment of Light Railway Commission.

1.—(1.) For the purpose of facilitating the construction and working of light railways (*r*) in Great Britain, there shall be established a commission consisting of three commissioners, to be styled the Light Railway Commissioners, and to be appointed by the President of the Board of Trade.

(2.) It shall be the duty of the Light Railway Commissioners to carry this Act into effect, and to offer, so far as they are able, every facility for considering and maturing proposals to construct light railways.

(3.) If a vacancy occurs in the office of any of the Light Railway Commissioners by reason of death, resignation, incapacity or otherwise, the President of the Board of Trade may appoint some other person to fill the vacancy, and so from time to time as occasion may require.

(4.) There shall be paid to one of the commissioners such salary not exceeding one thousand pounds a year, as the Treasury may direct.

(5.) The Board of Trade may, with the consent of the Treasury as to number and remuneration, appoint and employ such number of officers and persons as they think necessary for the purpose of the execution of the duties of the Light Railway Commissioners under this Act, and may remove any officer or person so appointed or employed (*s*).

(6.) The said salary and remuneration, and all expenses of the Light Railway Commissioners incurred with the sanction of the

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(*q*) By this Act county councils are empowered to apply to the light railway commissioners for an order authorizing a light railway. Such an order must be submitted to the Board of Trade for confirmation, and may require to be submitted to Parliament. If authorized by the order, a county council may contract and work the railway themselves, or contract for its construction and working, and advance moneys to a light railway company and combine with other councils or persons for these purposes. The Act contains provisions as to the expenses of county councils incurred under the Act, and as to the appointment of joint committees by county councils and other local authorities for the purposes of the Act. Orders made under the Act may contain various provisions for the protection of county councils. The Act expires on December 31st, 1901, unless continued. Full information on this Act and the Acts incorporated therewith as relating to light railways will be found in Dodd and Allan's "Law of Light Railways."

(*r*) The expression "light railway" is not defined by the Act. Some light is thrown on the meaning of the term by ss. 27--29 of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), and the Light Railways (Ireland) Act, 1889 (52 & 53 Vict. c. 67), s. 11.

(*s*) The offices of the commissioners are at No. 23, Great George Street, Westminster.

Treasury in the execution of this Act shall, except so far as provision is made for their payment by or under this Act, be paid out of moneys provided by Parliament. Sect. 1 (6).

(7.) The Commissioners may act by any two of their number.

(8.) The powers of the Light Railway Commissioners shall, unless continued by Parliament, cease on the thirty-first day of December one thousand nine hundred and one.

Application for orders authorising light railways.

2. An application for an order authorising a light railway under this Act shall be made to the Light Railway Commissioners, and may be made—

(a) by the council of any county, borough, or district, through any part of which the proposed railway is to pass (*t*) ; or

(b) by any individual, corporation, or company ; or

(c) jointly by any such councils, individuals, corporations, or companies.

Powers of local authorities under order.

3.—(1.) The council of any county, borough, or district, may if authorised by an order under this Act—

(a) undertake themselves to construct and work, or to contract for the construction or working of the light railway authorised ;

(b) advance to a light railway company, either by way of loan or as part of the share capital of the company (*u*), or partly in one way and partly in the other, any amount authorised by the order ;

(c) join any other council or any person or body of persons in doing any of the things above mentioned ; and

(d) do any such other act incidental to any of the things above mentioned as may be authorised by the order.

(2.) Provided that—

(a) an order authorising a council to undertake to construct and work or to contract for the construction or working of a light railway, or to advance money to a light railway company, shall not be made except on an application by the council made in pursuance of a special resolution passed in manner directed by the First Schedule to this Act ; and

(b) a council shall not construct or work or contract for the construction or working of any light railway wholly or

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(*t*) The application must be in pursuance of a special resolution. See s. 3 (2) (a) and First Schedule, *post*. If the railway is wholly or partly outside the county the provisions of s. 3 (2) (b) *post*, must be noticed. Applications will be received in the months of May and November only. See the rules of the Board of Trade, September 1896, *post*, which regulate the procedure to be followed in such applications. As to advertisements and notices, see also the provisions and procedure contained in s. 7, *post*. As to the documents which must accompany the application, see r. 27, Appendix, *post*.

(*u*) "Light Railway Company" and "share capital" are defined s. 28, *post*.

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partly outside their area, or advance any money for the purpose of any such railway, except jointly with the council of the outside area, or on proof to the satisfaction of the Board of Trade that such construction, working, or advance is expedient in the interests of the area of the first-mentioned council, and in the event of their being authorised so to do their expenditure shall be so limited by the order as not to exceed such amount as will, in the opinion of the Board of Trade, bear due proportion to the benefit which may be expected to accrue to their area from the construction or working of the railway.

Loans by Treasury.

4.—(1.) Where the council of any county, borough, or district have advanced or agreed to advance any sum to a light railway company, the Treasury may also agree to make an advance to the company by lending them any sum not exceeding one quarter of the total amount required for the purpose of the light railway and not exceeding the amount for the time being advanced by the council.

Provided that the Treasury shall not advance money to a light railway company under this section, unless at least one-half of the total amount required for the purpose of the light railway is provided by means of share capital, and at least one-half of that share capital has been subscribed and paid up by persons other than local authorities.

(2.) Any loan under this section shall bear interest at such rate not less than three pounds two shillings and sixpence per centum per annum as the Treasury may from time to time authorise as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer, and shall be advanced on such conditions as the Treasury determine.

(3.) Where the Treasury advance money to a light railway company under this section, and the advance by the council to the company is made in whole or part by means of a loan, the loan by the Treasury under this section shall rank pari passu with the loan by the council.

Special advances by Treasury.

5.—(1.) Where it is certified to the Treasury by the Board of Agriculture that the making of any light railway under this Act would benefit agriculture in any district, or by the Board of Trade that by the making of any such railway a necessary means of communication would be established between a fishing harbour or fishing village and a market, or that such railway is necessary for the development of or maintenance of some definite industry, but that owing to the exceptional circumstances of the district the railway would not be constructed without special assistance from the State, and the Treasury are satisfied that a railway company existing at the time will construct and work the railway if an

advance is made by the Treasury under this section, the Treasury may, subject to the limitation of this Act as to the amount to be expended for the purpose of special advances, agree that the railway be aided out of public money by a special advance under this section. Sect. 5 (1).

Provided that—

(a) the Treasury shall not make any such special advance unless they are satisfied that landowners, local authorities, and other persons locally interested have by the free grant of land or otherwise given all reasonable assistance and facilities in their power for the construction of the railway (*x*); and

(b) a special advance shall not in any case exceed such portion not exceeding one half of the total amount required for the construction of the railway as may be prescribed by rules to be made by the Treasury under this Act; and

(c) where the Treasury agree to make any such special advance as a free grant, the order authorising the railway may make provision as regards any parish that, during a period not exceeding ten years to be fixed by the order, so much of the railway as is in that parish shall not be assessed to any local rate at a higher value than that at which the land occupied by the railway would have been assessed if it had remained in the condition in which it was immediately before it was acquired for the purpose of the railway, but before such provision is made in any order the local and rating authorities of every such parish shall be informed of the intention to insert such provision, and shall be entitled to be heard. The order may authorise the Board of Trade to extend any such period.

(2.) A special advance under this section may be a free grant or a loan or partly a free grant and partly a loan.

(3.) Any free grant or loan for a special advance under this section shall be made on such conditions and at such rate of interest as the Treasury direct.

Limitation on amount of advance and provision of money by National Debt Commissioners.

6.—(1.) The total amount advanced by the Treasury under this Act shall not at any one time exceed one million pounds, of which a sum not exceeding two hundred and fifty thousand pounds may be expended for the purpose of special advances under this Act.

(2.) The National Debt Commissioners may lend to the Treasury, and the Treasury may borrow from the National Debt Commissioners, such money as may be required for the purpose of advances by the Treasury under this Act, on such terms as to interest, sinking fund, and period of repayment (not exceeding thirty years from the date

(*x*) *Quære* whether a county council could make a free grant of land vested in them for the purposes of the railway. See s. 19, *post*, and s. 7 of the Lands Clauses Act, 1845, and s. 19 of the Interpretation Act, 1889.

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of the loan) as may be agreed on between the National Debt Commissioners and the Treasury.

(3.) The sums so lent by the National Debt Commissioners shall be repaid out of money provided by Parliament for the purpose, and if and so far as that money is insufficient shall be charged on, and payable out of, the Consolidated Fund, or the growing produce thereof.

Consideration of application by Light Railway Commissioners.

7.—(1.) Where an application for authorizing a light railway under this Act is made to the Light Railway Commissioners, those Commissioners shall, in the first instance, satisfy themselves that all reasonable steps have been taken for consulting the local authorities, including road authorities, through whose areas the railway is intended to pass, and the owners and occupiers of the land it is proposed to take, and for giving public notice of the application, and shall also themselves by local inquiry and such other means as they think necessary possess themselves of all such information as they may consider material or useful for determining the expediency of granting the application.

(2.) The applicants shall satisfy the commissioners that they have

(a) published once at least in each of two consecutive weeks, in some newspaper circulating in the area or some part of the area through which the light railway is to pass, an advertisement describing shortly the land proposed to be taken and the purpose for which it is proposed to be taken, naming a place where a plan of the proposed works and the lands to be taken, and a book of reference to the plan, may be seen at all reasonable hours, and stating the quantity of land required; and

(b) served notice in the prescribed manner on every reputed owner, lessee, and occupier of any land intended to be taken, describing in each case the land intended to be taken, and inquiring whether the person so served assents to or dissents from the taking of his land, and requesting him to state any objections he may have to his land being taken.

The plan and book of reference shall be in the prescribed form, and for the purposes of this section the expression "prescribed" shall mean prescribed by rules made under this Act (*y*).

(3.) The Commissioners shall before deciding on an application give full opportunity for any objections to the application to be laid before them, and shall consider all such objections, whether made formally or informally.

(4.) If after consideration the Commissioners think that the application should be granted, they shall settle any draft order (*z*) submitted to them by the applicants for authorising the railway, and

(*y*) See these rules, *post*.

(*z*) See s. 11, *post*, as to what provisions the order may contain.

see that all such matters (including provisions for the safety of the public and particulars of the land proposed to be taken) are inserted therein, as they think necessary for the proper construction and working of the railway.

(5.) The order of the Light Railway Commissioners shall be provisional only, and shall have no effect until confirmed by the Board of Trade in manner provided by this Act.

(6.) Where an application for a light railway has been refused by the Light Railway Commissioners, the applicants, if the council of any county, borough, or district, may appeal against such refusal to the Board of Trade (*a*), who may, at any time if they think fit, remit the application or any portion thereof to the said Commissioners for further consideration with or without special instructions.

Submission of order to Board of Trade for confirmation.

8.—(1.) The Commissioners shall submit any order made by them under this Act to the Board of Trade for confirmation, accompanied by such particulars and plans as may be required by the Board, and shall also make and lay before the Board with the order a report stating the objections which have been made to the application, and the manner in which they have been dealt with, and any other matters in reference to the order which the Commissioners may think fit to insert in the report.

(2.) The Board of Trade shall give public notice of any order so submitted to them in such manner as they think best for giving information thereof to persons interested, and shall also state in the notice that any objections to the confirmation of the order must be lodged with the board and the date by which those objections must be lodged.

Consideration of order by Board of Trade.

9.—(1.) The Board of Trade shall consider any order submitted to them under this Act for confirmation with special reference to—

(a) the expediency of requiring the proposals to be submitted to Parliament; and

(b) the safety of the public; and

(c) any objection lodged with them in accordance with this Act.

(2.) The Light Railway Commissioners shall, so far as they are able, give to the Board of Trade any information or assistance which may be required by the Board for the purpose of considering any order submitted to them or any objection thereto.

(3.) If the Board of Trade on such consideration are of opinion that by reason of the magnitude of the proposed undertaking, or of the effect thereof on the undertaking of any railway company existing at the time, or for any other special reason relating to the undertaking, the proposals of the promoters ought to be submitted to Parliament, they shall not confirm the order.

(*a*) As to objecting to the confirmation by the Board of Trade of an order made by the commissioners, see ss. 8 and 9 (5), *post*.

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(4.) The Board of Trade shall modify the provisions of the order for ensuring the safety of the public in such manner as they consider requisite or expedient.

(5.) If any objection to the order is lodged with the Board of Trade and not withdrawn, the Board of Trade shall consider the objection and give to those by whom it is made an opportunity of being heard, and if after consideration they decide that the objection should be upheld, the Board shall not confirm the order, or shall modify the order so as to remove the objection.

(6.) The Board of Trade may at any time, if they think fit, remit the order to the Light Railway Commissioners for further consideration, or may themselves hold or institute a local inquiry, and hear all parties interested.

Confirmation of order by Board of Trade.

10. The Board of Trade may confirm the order with or without modifications as the case may require, and an order so confirmed shall have effect as if enacted by Parliament, and shall be conclusive evidence that all the requirements of this Act in respect of proceedings required to be taken before the making of the order have been complied with.

Provisions which may be made by the order.

11. An order under this Act may contain provisions consistent with this Act for all or any of the following purposes—

(a) the incorporation, subject to such exceptions and variations as may be mentioned in the order, of all or any of the provisions of the Clauses Acts as defined by this Act (*b*). Provided that where it appears to the Board of Trade that variations of the Lands Clauses Acts are required by the special circumstances of the case, the Board of Trade shall make a special report to Parliament on the subject, and that nothing in this section shall authorise any variation of the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement (*c*); and

(b) the application, if and so far as may be considered necessary, of any of the enactments mentioned in the Second Schedule to this Act (being enactments imposing obligations on railway companies with respect to the safety of the public and other matters); and

(c) giving the necessary powers for constructing and working the railway, including power to make agreements with railway and other companies for the purpose; and

(d) giving any railway company any power required for carrying the order into effect; and

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(*b*) See the definition in s. 28, *post*.

(*c*) Sections 16—68 of the Lands Clauses Act, 1845, are here referred to; they are varied in several important particulars by ss. 13 and 14 of this Act, *post*.

(e) the constitution as a body corporate of a company for the purpose of carrying out the objects of the order; and

(f) the representation on the managing body of the railway of any council who advance, or agree to advance, any money for the purpose of the railway; and

(g) authorising a council to advance or borrow money for the purposes of the railway and limiting the amount to be so advanced or borrowed, and regulating the terms on which any money is to be so advanced or borrowed; and

(h) the manner in which the profits are to be divided, where an advance is made by a council to a light railway company as part of the share capital of the company; and

(i) the proper audit of the accounts of the managing body of the railway where the managing body is not a local authority and the time within which the railway must be constructed; and

(j) fixing the maximum rates and charges for traffic; and

(k) in the case of a new company, requiring the company to make a deposit, and providing for the time of making and the application of the deposit; and

(l) empowering any local authority to acquire the railway; and

(m) any other matters, whether similar to the above or not, which may be considered ancillary to the objects of the order or expedient for carrying those objects into effect.

Application of general Railway Acts.

12.—(1.) The Clauses Acts, as defined by this Act, and the enactments mentioned in the Second Schedule of this Act, shall not apply to a light railway authorised under this Act except so far as they are incorporated or applied by the order authorizing the railway.

(2.) Subject to the foregoing provisions of this Act and to any special provisions contained in the order authorising the railway, the general enactments relating to railways shall apply to a light railway under this Act in like manner as they apply to any other railway; and for the purposes of those enactments, and of the Clauses Acts so far as they are incorporated or applied by the order authorising the railway, the light railway company shall be deemed a railway company, and the order under this Act a special Act, and any provision thereof a special enactment. Provided that a light railway shall not be deemed to be a railway within the meaning of the Railway Passenger Duty Act, 1842, and that no duties shall hereafter be levied in respect of passengers conveyed on a light railway constructed under this Act in respect of the conveyance of such passengers upon such railway.

5 & 6 Vict, c. 79.

Mode of settling purchase-money and compensation for

13.—(1.) Where any order under this Act incorporates the Lands Clauses Acts, any matter which under those Acts may be determined by the verdict of a jury, by arbitration, or by two justices, shall for the purposes of the order be referred to and determined by a single

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arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator then by the Board of Trade, and the provisions of this Act shall apply with respect to the determination of any such matter in lieu of those of the Lands Clauses Acts relating thereto. Provided that in determining the amount of compensation, the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed light railway.

(2.) The Board of Trade may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on any such arbitration, and may, by such rules, limit the cases in which the costs of counsel are to be allowed.

52 & 53 Vict. c. 49.

(3.) The Arbitration Act, 1889, shall apply to any arbitration under this section.

Payment of purchase money or compensation.

14. Any order under this Act may, notwithstanding anything in the Lands Clauses Acts, authorise the payment to trustees of any purchase money or compensation not exceeding five hundred pounds.

Provisions as to Board of Trade. 37 & 38 Vict. c. 40.

15.—(1.) If the Board of Trade hold a local inquiry for the purposes of this Act, Part I. of the Board of Trade Arbitrations, etc., Act, 1874, shall apply to any inquiry so held as if—

(a) the inquiry was held on an application made in pursuance of a special Act; and

(b) the parties making the application for the order authorising the light railway, and in the case of an inquiry held with reference to an objection made to any such application the persons making the objection in addition, were parties to the application within the meaning of section three of the Act.

(2.) The Board of Trade may make such rules as they think necessary for regulating the procedure under this Act, whether before the Board of Trade or before the Light Railway Commissioners, and any other matters which they may think expedient to regulate by rule for the purpose of carrying this Act into effect (*d*).

(3.) There shall be charged in respect of proceedings under this Act before the Board of Trade or the Light Railway Commissioners such fees as may be fixed by the Treasury on the recommendation of the Board of Trade.

(4.) Any expenses of the Board of Trade under this Act shall, except so far as provision is made for their payment by or under this Act, be defrayed out of moneys provided by Parliament.

(5.) The Board of Trade shall present to Parliament annually a report of their proceedings and of the proceedings of the Light Railway Commissioners under this Act.

(*d*) See the rules set out, *post*, p. 831.

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Expenses of local authorities.

16.—(1.) The council of any county, borough, or district may pay any expenses incurred by them and allowed by the Light Railway Commissioners with reference to any application for an order authorising a light railway under this Act, in the case of a county council as general expenses (*e*), in the case of a borough council out of the borough fund or rate, and in the case of a district council other than a borough council as general expenses under the Public Health Acts.

Provided that any expenses incurred by a county council under this Act may be declared by the order authorising the railway or, in the event of an unsuccessful application for such an order, by the Light Railway Commissioners, to be exclusively chargeable on certain parishes only in the county, and those expenses shall be levied accordingly as expenses for a special county purpose under the Local Government Act, 1888 (*e*).

51 & 52 Vict. c. 41.

(2.) Where the council of any county, borough, or district are authorised to expend any money by an order authorising a light railway under this Act, they may raise the money required,—

(a) if the expenditure is capital expenditure, by borrowing in manner authorised by the order; and

(b) if the expenditure is not capital expenditure, as if it was on account of the expenses of an application under this Act.

(3.) The Board of Trade may from time to time on the application of any council extend, subject to the limitations of this Act, the limit of the amount which the council are authorised by an order under this Act to borrow, or to advance to a light railway company, and the limit so extended shall be substituted for the limit fixed by the order.

(4.) Where an order under this Act authorises any council to borrow for the purposes of a light railway, suitable provision shall be made in the order for requiring the replacement of the money borrowed within a fixed period not exceeding sixty years, either by means of a sinking fund or otherwise.

(5.) Any profits made by a council in respect of a light railway shall be applied in aid of the rate out of which the expenses of the council in respect of the light railway are payable.

(6.) Where a rate is levied for meeting any expenditure under this Act, the demand note for the rate shall state, in a form prescribed by the Local Government Board, the proportion of the rate levied for that expenditure.

Joint committees.

17.—(1.) The councils of any county, borough, or district, may appoint a joint committee for the purpose of any application for an order authorising a light railway under this Act, or for the joint construction or working of a light railway, or for any other purpose

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(*e*) As to general expenses of a county council and special county purposes, see s. 68 of the Local Government Act, 1888, *ante*, p. 130.

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in connexion with such a railway for which it is convenient that those councils should combine.

51 & 52 Vict. c. 41. 56 & 57 Vict. c. 73.

(2.) The provisions of the Local Government Act, 1888, or of the Local Government Act, 1894, as the case may be, with respect to joint committees, shall apply to any joint committee appointed for the purpose of this Act by any councils who could appoint a joint committee under those Acts, but where the councils have no power under those Acts to appoint a joint committee the provisions in the Third Schedule to this Act shall apply (*f*).

Working of ordinary railway as light railway.

18. Where a company have power to construct or work a railway, they may be authorised by an order under this Act to construct and work or to work the railway or any part of it as a light railway under this Act.

Power of owners to grant land or advance money for a light railway.

19.—(1.) Where any person has power, either by statute or otherwise, to sell and convey any land for the purpose of any works of a light railway, he may, with the sanction of the Board of Agriculture given under this section, convey the land for that purpose either without payment of any purchase money or compensation or at a price less than the real value, and may so convey it free from all incumbrances thereon (*g*).

27 & 28 Vict. c. 114.

(2.) Whenever any person who is a landowner within the meaning of the Improvement of Land Act, 1864, contributes any money for the purpose of any works of a light railway, the amount so contributed may, with the sanction of the Board of Agriculture given under this section, be charged on the land of the landowner improved by the works in the same manner and with the like effect as in the case of a charge under that Act.

(3.) The Board of Agriculture shall not give their sanction under this section unless they are satisfied that the works for which the land is conveyed or the money is contributed will effect a permanent increase in the value of the land held by the same title or of other land of the same landowner exceeding, in the case of a conveyance of land, that which is, in the opinion of the Board of Agriculture, the real value of the land conveyed or the difference between that value and the price, as the case may be, and in the case of a contribution of money the amount contributed: Provided also, that if the land proposed to be conveyed is subject to incumbrances, the Board of Agriculture, before giving their sanction under this section, shall cause notice to be given to the incumbrancers, and shall consider the objections, if any, raised by them.

(*f*) Joint committees of county councils may be appointed under s. 81 of the Local Government Act, 1888, *ante*, p. 155; of district councils under s. 57 the Local Government Act, 1894, *ante*, p. 642. Joint committees of county and district councils will be appointed under the text, and the provisions of the Third Schedule, *post*, will apply.

(*g*) See note (*x*), *ante*, p. 723.

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Power to grant Crown lands.

20. The Commissioners of Woods, shall, on behalf of Her Majesty, have the like powers to convey Crown lands as are by this Act conferred upon persons having power, either by statute or otherwise, to sell and convey lands, except that in the case of Crown lands the sanction of the Treasury shall be substituted for the sanction of the Board of Agriculture.

Provision as to commons.

21.—(1.) No land being part of any common, and no easement over or affecting any common, shall be purchased, taken, or acquired under this Act without the consent of the Board of Agriculture, and the Board shall not give their consent unless they are satisfied that, regard being had to all the circumstances of the case, such purchase, taking, or acquisition is necessary, that the exercise of the powers conferred by the order authorising the railway will not cause any greater injury to the common than is necessary, and that all proper steps have been taken in the interest of the commoners and of the public to add other land to the common (where this can be done) in lieu of the land taken, and where a common is divided to secure convenient access from one part of the common to the other.

(2.) The expression "common" in this section shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1878, and any town or village green.

Preservation of scenery and objects of historical interest.

22. If any objection to any application for authorising a light railway is made to the Light Railway Commissioners, or if any objection to any draft order is made to the Board of Trade on the ground that the proposed undertaking will destroy or injure any building or other object of historical interest, or will injuriously affect any natural scenery, the Commissioners and the Board of Trade respectively shall consider any such objection, and give to those by whom it is made a proper opportunity of being heard in support of it.

Junctions with existing railways.

23. Any junction of a light railway authorised under this Act with any existing railway shall so far as is in the opinion of the Board of Trade reasonably practicable avoid interference with lines of rails used for passenger traffic.

Amendment of order.

24. An order authorising a light railway under this Act may be altered or added to by an amending order made in like manner and subject to the like provisions as the original order.

Provided that—

(a) the amending order may be made on the application of any authority or person; and

(b) the Board of Trade, in considering the expediency of requiring the proposals for amending the order to be submitted to Parliament, shall have regard to the scope and provisions of the original order; and

Sect. 24.

(c) the amending order shall not confer any power to acquire the railway except with the consent of the owners of the railway.

Provision as to telegraphs. 41 & 42 Vict. c. 76.

25. The definition of "Act of Parliament" in the Telegraph Act, 1878, shall include an order authorising a light railway under this Act (*h*).

26. *Application to Scotland.*]

Extent of Act.

27. *Act not to extend to Ireland.*]

Definitions.

28. In this Act, unless the context otherwise requires,—

The expression "light railway company" includes any person or body of persons, whether incorporated or not, who are authorised to construct, or are owners or lessees of, any light railway authorised by this Act, or who are working the same under any working agreement:

The expression "Clauses Acts" means the Lands Clauses Acts, the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Act, 1863, and the Companies Clauses Acts, 1845 to 1889:

The expression "share capital" includes any capital, whether consisting of shares or of stock, which is not raised by means of borrowing.

Short title.

29. This Act may be cited as the Light Railways Act, 1896.

SCHEDULES.

Section 3.

FIRST SCHEDULE.

Mode of Passing Special Resolutions.

1. The resolution approving of the intention to make the application must be passed at a meeting of the council.

2. The resolution shall not be passed unless a month's previous notice of the resolution has been given in manner in which notices of meetings of the council are usually given.

3. The resolution shall not be passed unless two-thirds of the members of the council present and voting concur in the resolution.

(*h*) The effect of this section is to empower the Postmaster-General to establish telegraph lines on a light railway constructed under this Act.

SECOND SCHEDULE.

Schedule 2.

Section 12.

ENACTMENTS RELATING TO SAFETY, ETC.

Session and Chapter.	Title or Short Title.	Enactment referred to.
2 & 3 Vict. c. 45. -	An Act to amend an Act of the fifth and sixth years of the reign of his late Majesty King William the Fourth relating to highways.	The whole Act.
5 & 6 Vict. c. 55. -	The Railway Regulation Act, 1842 -	Sections four, five, six, nine, ten.
9 & 10 Vict. c. 57. -	An Act for regulating the gauge of railways.	The whole Act.
31 & 32 Vict. c. 119. -	The Regulation of Railways Act, 1868 -	Sections nineteen, twenty, twenty-two, twenty-seven, twenty-eight, and twenty-nine.
34 & 35 Vict. c. 78. -	The Regulation of Railways Act, 1871 -	Section five.
36 & 37 Vict. c. 76. -	The Railway Regulation Act (Returns of signal arrangements, working, etc.), 1873.	Sections four and six.
41 & 42 Vict. c. 20. -	The Railway Returns (Continuous Brakes) Act, 1878.	The whole Act.
46 & 47 Vict. c. 34. -	The Cheap Trains Act, 1883 - - -	Section three.
52 & 53 Vict. c. 57. -	The Regulation of Railways Act, 1889 -	The whole Act.

THIRD SCHEDULE. (*i*)

JOINT COMMITTEES.

(a.) Any council taking part in the appointment of a joint committee may delegate to the committee any power which the council may exercise for the purpose for which the committee is appointed.

(b.) A council shall not be authorised to delegate to a joint committee any power of making a rate or borrowing money.

(c.) Subject to the terms of the delegation the joint committee shall have the same power in all respects with respect to any matter delegated to them, as the councils appointing it or any of them.

(d.) The members of the joint committee may be appointed at such times and in such manner, and shall hold office for such period, as may be fixed by the councils appointing them :

Provided that a member shall not hold office beyond the expiration of fourteen days after the day for the ordinary election of councillors of the council by which he was appointed, or in Scotland after the day for the ordinary election of councillors of the council of the county in which the district is situated.

(e.) The costs of a joint committee shall be defrayed by the councils by whom the committee is appointed, in such proportions as they may agree upon, and in the event of their differing in opinion, as may be determined by the Board of Trade on an application by either council.

(f.) When any of the councils joining in the appointment of a joint committee is a county or district council other than a borough council, the accounts of the joint committee shall be audited in like manner and with the like power to the officer auditing the accounts,

(*i*) As to the application of this Schedule, see s. 17 (2), *ante* p. 730.

Schedule 3.

and with the like incidents and consequences as the accounts of a county council (*j*).

(g.) The chairman at any meeting of the committee shall have a second or casting vote.

(h.) The quorum, proceedings, and place of meeting of a committee, whether within or without the area within which the committee are to exercise their authority, shall be such as may be determined by regulations jointly made by the councils appointing the committee, and in the event of their differing in opinion as may be determined by the Board of Trade on an application by either council.

(i.) Subject to those regulations the quorum, proceedings, and place of meeting, whether within or without the area within which the committee are to exercise their jurisdiction, shall be such as the committee direct.

WILD BIRDS PROTECTION ACT, 1896.

(59 & 60 VICT. CAP. 56.)

An Act to amend the Wild Birds Protection Acts (*k*).

[14th August 1896.]

* * * * *

Extension of powers under 43 & 44 Vict. c. 35.

1. From and after the passing of this Act the powers exerciseable by the Secretary of State on application (*l*) under section eight of the Wild Birds Protection Act, 1880, shall extend to the making of an order prohibiting, for special reasons mentioned in the application, the taking or killing of particular kinds of wild birds during the whole or any part of that period of the year to which the protection of wild birds under that Act does not extend, or the taking or killing of all wild birds in particular places during the whole or any part of that period.

Publication of orders.

2. Public notice of any order made under this Act shall be given in the manner required by the Wild Birds Protection Act, 1894, with respect to orders made under that Act (*m*).

Explanation of 57 & 58 Vict. c. 24.

3. The powers exerciseable under the Wild Birds Protection Act, 1894, by the county council of an administrative county are hereby declared to be exerciseable by the council of a county borough, and any expenses incurred by the council of a county borough under that Act or this Act may be defrayed out of the borough fund or borough rate.

(*j*) As to the audit of the accounts of a county council, see s. 71 of the Local Government Act, 1888, *ante*, p. 136.

(*k*) See the note to Local Government Act, 1888, s. 3 (xiii.), *ante*, p. 12, and also the Wild Birds Protection Act, 1894, *ante*, p. 666.

(*l*) The application must be made by the county council. See the section referred to and s. 3 (xiii.) of the Local Government Act, 1888, *ante*, p. 12.

(*m*) See s. 4 of that Act, *ante*, p. 667.

4. Where any person is convicted of an offence against this Act or the principal Act, the court may, in addition to any penalty that may be imposed, order any trap, net, snare, or decoy bird used by such person for taking any wild bird to be forfeited. Power to forfeit traps, nets, snares, etc.

5. *Application to Scotland.*]

6. *Act not to extend to Ireland.*]

7. This Act may be cited as the Wild Birds Protection Act, 1896, and shall be construed with the Wild Birds Protection Act, 1880, the Wild Birds Protection Act, 1881, and the Wild Birds Protection Act, 1894, and those Acts and this Act may be cited collectively as the Wild Birds Protection Acts, 1880 to 1896. Short title, and collective title.

YORKSHIRE CORONERS ACT, 1897.

(60 & 61 VICT. CAP. 39.)

An Act to constitute the Ridings of Yorkshire separate Counties for all the purposes of the Coroners Acts. [6th August 1897.]

* * * * *

1. For all the purposes of the Coroners Acts, 1844, 1860, 1887, and 1892, the ridings of Yorkshire shall respectively be separate counties, and the county council of each riding shall, to the exclusion of any other authority, be the county authority for all the purposes of those Acts (*n*). Ridings of Yorkshire to be separate counties in respect of the Coroners Acts.

Provided that nothing in this section shall affect the alteration in manner provided by section five, sub-section three, of the Local Government Act, 1888, of the district of any coroner which is at the commencement of this Act situate partly in one and partly in another of the ridings (*o*). 51 & 52 Vict. c. 41.

2. Nothing herein contained shall affect the rights, duties, powers, or liabilities of any county coroner holding office at the commencement of this Act, and if the district of any such coroner is divided into two or more districts, residence in any one of such districts shall be deemed to comply with section five of the Coroners Act, 1844 (*p*). Rights of existing county coroners. 7 & 8 Vict. c. 92.

(*n*) This is an amendment of s. 38 of the Coroners Act, 1887 (50 & 51 Vict. c. 71), which provided that the whole of Yorkshire should be a county for purposes of that Act.

(*o*) See this sub-section, *ante*, p. 15. It enables the joint committee of the county appointed under s. 46, *ante*, p. 99, to alter the district of any coroner so that it should not be situate in more than one riding.

(*p*) An existing coroner will therefore continue to be a coroner for the entire county of Yorkshire under 7 & 8 Vict. c. 92, s. 19, but he will satisfy the requirements of s. 5 of that Act by residing in any part of his present district even if that is divided under s. 5, sub-s. (3) of the Local Government Act, 1888, *ante*, p. 15.

Sect. 3.
Commencement of Act.

3. This Act shall come into operation on the first day of April, one thousand eight hundred and ninety-eight.

Short title.

4. This Act may be cited as the Yorkshire Coroners Act, 1897.

LOCAL GOVERNMENT (JOINT COMMITTEES) ACT, 1897.

(60 & 61 VICT. CAP. 40.)

An Act to amend the Local Government Act, 1894, with regard to Joint Committees for the purposes of the Burial Acts (*q*).

[6th August 1897.]

* * * * *

Joint committees for Burial Acts. 56 & 57 Vict. c. 73.

1.—(1.) Where a joint committee is appointed under section fifty-three of the Local Government Act, 1894, for the purposes of the Burial Acts, 1852 to 1885—

(a) any expenses incurred in carrying out those purposes shall be defrayed, any money borrowed for those purposes shall be borrowed, and any receipts arising from those purposes shall be divided, by the councils appointing the committee in such proportion as they may agree upon, or, as in default of agreement, may be determined by the county council, or, if one of the councils so appointing is the council of a county borough, by the Local Government Board;

(b) the consent of the Local Government Board shall be required to the borrowing by any council of any money required to be borrowed for those purposes, but that consent shall be conclusive as to the power of the council to borrow, and no other consent shall be required either under the said Burial Acts, or the Local Government Act, 1894, or any other Act (*r*);

(c) Part IV. of the First Schedule to the Local Government Act, 1894, shall apply to the proceedings of the committee.

(*q*) Section 53 (2) of the Local Government Act, 1894, *ante*, p. 639, provides for the execution of the Burial Acts (amongst other "adoptive Acts") in cases where by the operation of the Act of 1894 a parish in which the Burial Acts were in force became divided into two or more parishes: the powers under the Burial Acts were transferred to the councils of the rural parishes or urban districts which comprised the old Burial Acts area, and were to be exercised by a joint committee appointed by those councils. The section did not provide for the constitution of the joint committee. This Act makes provision for this, as also for the apportionment of the expenses, but it seems doubtful whether it does not create new difficulties as to the area chargeable with the expenses when apportioned having regard to s. 7 (6) and s. 53 (3) of the Act of 1894, *ante*, pp. 599, 640.

(*r*) A parish council borrowing in pursuance of this Act will not require to obtain the consent of the county council under s. 12 (1) of the Local Government Act, 1894, *ante*, p. 609; and as the consent of the Local Government Board is to be conclusive, it appears that the consent of the parish meeting and the approval of the county council (under s. 11 of the same Act) to the incurring by the parish council of expenses involving a loan will not be necessary.

(2.) If any difference arises as to the constitution of any such committee it may be determined by order of the Local Government Board. Sect. 1 (2).

(3.) For the purposes of this section references to a council shall, in the case of a parish not having a parish council, include the parish meeting, and the parish meeting shall have the same power of borrowing for the purposes of the Burial Acts as a parish council would have (*s*).

2. This Act shall be construed as one with the Local Government Act, 1894, and may be cited as the Local Government (Joint Committees) Act, 1897. Short title.

MILITARY MANŒUVRES ACT, 1897.

(60 & 61 VICT. CAP. 43) (*t*).

An Act to facilitate Military Manœuvres. [6th August 1897.]

* * * * *

1.—(1.) Her Majesty may, by Order in Council, authorise the execution of military manœuvres within specified limits and during a specified period not exceeding three months. Provided that the same limits, or any part thereof, shall not be specified more than once in any period of five years. Power to authorise execution of military manœuvres.

(2.) Whenever it is proposed to make any such Order a draft thereof shall, not less than six months before the Order is to come into force, be sent to the council of each county, county borough, district, and parish, wholly or partly within the specified limits, and in the case of the New Forest to the court of verderers; and notice of this intention to make the Order shall, not less than three months before the Order is to come into force, be advertised in at least two newspapers circulating generally within the district (*u*).

(*s*) The Act of 1894 does not contemplate any borrowing by a parish meeting; the mortgage could, it seems, be executed, on the direction of the parish meeting, by the chairman and overseers under s. 19 (6) of the Local Government Act, 1894, *ante*, p. 616.

(*t*) This Act affects county councils as highway authorities in respect of main roads, and also as having the duty of appointing members of the military manœuvres commission referred to in ss. 4, *et seq.* It is probably intended also that they shall have power to raise objections to the making an Order in Council under the Act. See s. 1 (2).

(*u*) It may be presumed that the object of this provision is to enable the county councils and other bodies mentioned to make representations to the Privy Council as to the desirability or otherwise of making the order of which the draft is before them for consideration. The order ought, it would seem, to be made a sufficient time before its coming into force to enable the proceedings of the military manœuvres commission mentioned in s. 5, *infra*, to take place.

Sect. 1 (3). (3.) The draft Order shall not be submitted to Her Majesty in Council until it has lain before each House of Parliament for thirty days on which that House is sitting, nor unless each House presents an address to Her Majesty praying that the Order may be made.

Powers exercisable for purposes of manœuvres.

2. Where an Order in Council under this Act authorises the execution of military manœuvres, such persons as are under the authority of Her Majesty engaged in the manœuvres (in this Act referred to as the authorised forces) may under the direction of the Secretary of State within the specified limits and during the specified period,

(a) pass over, and encamp, construct military works, not of a permanent character, and execute military manœuvres on any authorised land (*x*) ; and

(b) supply themselves with water from any authorised sources of water (*x*), and, for that purpose, dam up any running water. Provided always, that such damming up of water does not interfere with the carrying on of any trade or industry, and that nothing in this Act shall authorise the taking of water from any source of supply belonging to a private owner, or public authority, except subject to the supply shown to be required by those entitled to use such water supply.

Provided as follows—

(1.) Nothing in this Act shall authorise entry on or interference with (except to the extent of using authorised roads (*x*)) any dwelling-house, place of worship, school, factory, workshop, store or premises, used for the carrying on of any trade, business, or manufacture, farmyard, garden, orchard, pleasure ground or nursery ground, burial ground, ground attached to any place of worship, or school, or any premises enclosed within the curtilage of or attached to any dwelling-house, or any enclosed wood or plantation.

(2.) The officer in command of the authorised forces (*y*) shall take care that there is no interference with earthworks, ruins, or other remains of antiquarian or historical interest, or with any picturesque or valuable timber, or other natural features of exceptional interest or beauty, and shall be empowered to prevent trespass or damage to property by persons not belonging to the forces, and shall cause all lands used under the powers conferred by this Act to be restored as soon and as far as practicable to their previous condition.

(*x*) The expressions "authorized land," "authorized sources," and "authorized roads," are explained by s. 5, *infra*.

(*y*) This expression is defined at the beginning of this section.

Sect. 2 (3).

(3.) Subject to the provisions of this Act with respect to—

(a) the closing of roads and footpaths; and

(b) obstruction of or interference with military manœuvres; and

(c) entering or remaining in a camp,

nothing in this Act shall prejudicially affect any public right or any right of common.

Power to close roads

3.—(1.) Two justices of the peace, not being military officers in command of the forces (*z*), may, if they shall think fit, on the application of a commissioned officer in command of the authorised forces or of part thereof, by order, suspend, for a time not exceeding forty-eight hours, any right of way over any road or footpath (*a*) within the specified limits and within their jurisdiction. Provided that any such order shall only be made with regard to any county, or main, or parish, road by at least two justices, not being military officers in command of the forces (*z*), sitting in petty sessions in the petty sessional division or divisions within which such road or part of road to be stopped is situate, and for a time not exceeding twelve hours, and after seven days notice of such intended application published in at least one newspaper circulating generally in the district, and subject to such terms and conditions as may be required by the said justices for the protection of individuals or of the public or of public bodies.

(2.) The officer in command of the authorised forces shall cause such public notice of the order as the justices may require to be given not less than twelve hours before the order comes into force, and shall give all reasonable facilities for traffic whilst the order is in force.

Military Manœuvres Commission.

4.—(1.) Whenever an Order in Council is made (*b*) under this Act a commission (in this Act called the Military Manœuvres Commission) shall be formed consisting of as representative members (a) and (b):

(a) two persons appointed by the council of each county and one person appointed by the council of each county borough (if any) wholly or partly within the specified limits; and

(b) if those limits include any part of the New Forest, two persons appointed by the court of verderers; and

(c) such other persons, being resident owners or occupiers of land within those limits, as may be appointed by the

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(*z*) The context seems to require that "forces" should be read as "authorized forces" here.

(*a*) Apparently the road or footway need not be an "authorized road" within s. 5 (1), *infra*.

(*b*) The commission is not to be formed until the order has been actually made; but it appears necessary that they should act before it comes into force. See note (*u*), *ante*, p. 737.

Sect. 4 (1).

Secretary of State. Provided always that the persons appointed under the foregoing provisions of this section exceed in number the persons appointed by the Secretary of State.

(2.) The commission may act by three of their number, and notwithstanding any vacancy in their number.

(3.) Any question arising at any meeting of the commission shall be decided by the majority of those voting on the question, and if the votes are equal the chairman of the meeting shall have a second or casting vote.

Power of Commission to make orders and regulations.

5.—(1.) The Military Manœuvres Commission may make orders for determining what lands, roads, and sources of water are to be authorised lands, roads, and sources within the meaning of this Act (*c*).

(2.) Before any such order is made, a draft thereof shall be sent to the district council for each district wholly or partly within the specified limits, and be deposited by them for public inspection during at least two weeks at their office or some other suitable place fixed by them, and notice of the deposit, stating the mode of objecting to the order (*d*), shall be advertised for two successive weeks in at least two newspapers circulating generally within those limits.

(3.) The commission shall hold at least one public meeting to hear any objections to the draft order, and shall consider all objections made, and shall, if necessary, revise the draft order with reference thereto, and within a week of such meeting serve the revised draft on such district council.

(4.) The commission may also make regulations with respect to—

(a) the protection and maintenance of animals by securing them in folds or farmyards, or otherwise, and

(b) any matter which the commission may deem important for preventing damage to property and for carrying into effect the purposes of this Act.

(5.) Any person who, without reasonable cause, fails to comply with any such regulation shall not be entitled to compensation for any damage caused to his property by reason of his default.

(6.) All orders and regulations made by the commission shall be published in such manner as may appear to the commission most suitable for giving notice thereof to the persons affected thereby.

Compensation for damage.

6.—(1.) Where an Order in Council authorises the execution of military manœuvres, full compensation shall be made out of money to be provided by Parliament for any damage to person or property

(*c*) The lands, roads, and sources must of course be within the limits specified in the Order in Council.

(*d*) The mode of objecting is left to the discretion of the commission, subject to sub-s. (3), *infra*.

or interference with rights or privileges, arising from putting in force any of the provisions of this Act, and whether or not occasioned by the acts or defaults of the authorised forces, including therein all expenses reasonably incurred in protecting persons, property, rights, and privileges, and any damage by reason of excessive weight or extraordinary traffic caused to any highway for the repair of which any public body or any individual is responsible.

(2.) The Military Manœuvres Commission shall, with the concurrence of the Treasury, appoint a compensation officer or compensation officers to determine as speedily as possible any claim for compensation under this Act, and settle the amount payable.

(3.) The commission may make regulations with respect to the procedure for making and determining claims for compensation, for limiting the time within which claims must be made, and for regulating the mode in which compensation is to be paid.

(4.) If the amount of compensation is not settled by agreement between the compensation officer and the claimant, the difference between them shall be referred to arbitration, and for this purpose the service in manner directed by the regulations of a notice of claim for compensation shall be treated as a submission to arbitration within the meaning of the Arbitration Act, 1889, and that Act shall apply accordingly. 52 & 53 Vict. c. 44.

7.—(1.) If, within the limits and during the period specified in an Order authorising military manœuvres under this Act, any person— Offences.

(a) wilfully and unlawfully obstructs or interferes with the execution of the manœuvres; or

(b) without due authority enters or remains in any camp,

he shall be liable on summary conviction to a fine not exceeding forty shillings, and he and any animal or vehicle under his charge may be removed by any constable, or by, or by order of, any commissioned officer of the authorised forces.

(2.) If within the limits and during the period aforesaid, any person—

(a) without due authority moves any flag or other mark distinguishing, for the purposes of the manœuvres, any lands; or

(b) maliciously cuts or damages any telegraph wire laid down by or for the use of the authorised forces,

he shall be liable on summary conviction to a fine not exceeding five pounds.

8. [*Application to Scotland.*]

9. [*Application to Ireland.*]

10. This Act may be cited as the Military Manœuvres Act, 1897. Short title.

WEIGHTS AND MEASURES (METRIC SYSTEM) ACT, 1897.
(60 & 61 Vict. Cap. 46.)

An Act to legalize the Use of Weights and Measures of the Metric System. [6th August 1897.]

* * * * *

Use of metric weights and measures in trade.
41 & 42 Vict. c. 49.

1. Notwithstanding anything in the Weights and Measures Act, 1878, the use in trade of a weight or measure of the metric system shall be lawful, and nothing in section nineteen of that Act shall make void any contract, bargain, sale, or dealing, by reason only of its being made or had according to weights or measures of the metric system, and a person using or having in his possession a weight or measure of the metric system shall not by reason thereof be liable to any fine (*e*).

Metric standards and equivalents.
41 & 42 Vict. c. 49.

2.—(1.) The Board of Trade standards which may be made under section eight of the Weights and Measures Act, 1878, shall include metric standards derived from the iridio-platinum linear standard metre and iridio-platinum standard kilogram deposited with the Board of Trade and numbered 16 and 18 respectively (*f*).

(2.) It shall be lawful for the Queen by Order in Council to make a table of metric equivalents in substitution for the table in Part I. of the Third Schedule to the Weights and Measures Act, 1878, and, as from the date at which the Order in Council comes into operation, Part I. of the said schedule and sections eighteen and thirty-eight of the said Act shall be repealed (*g*).

Short title.

3. This Act may be cited as the Weights and Measures (Metric System) Act, 1897, and may be cited with the Weights and Measures Acts, 1878 to 1893 (*h*).

(*e*) Section 19 of the Weights and Measures Act, 1878, makes void contracts, bargains, sales and dealings for work, goods, wares, or merchandise, or other things to be done, sold, delivered, carried or agreed for by weight or measure if not made or had according to one of the imperial weights or measures ascertained by that Act, and makes liable to a fine any person selling by any denomination of weight or measure other than one of the imperial weights or measures or some multiple or part thereof. Section 24 renders liable to a fine every person who uses or has in his possession for use for trade a weight or measure not of the denomination of some Board of Trade standard. These and any similar prohibitions in the Act are not to apply to weights or measures of the metric system.

(*f*) The Board of Trade standards (derived from the Imperial standards) are set out in the Second Schedule to the Act of 1878. Section 8 provides for the making of new Board of Trade standards.

(*g*) Section 18 of the Act of 1878 provides that the table of metric equivalents in the Third Schedule may be lawfully used for computing and expressing in weights and measures, weights and measures of the metric system. Section 38 provides for the verification by the Board of Trade of metric weights and measures submitted to them and intended to be used for lawful purposes, not being for the purpose of trade. The table of metric equivalents forms Part I. of the Third Schedule.

(*h*) See the Act of 1893, *ante*, p. 574.

LAND TRANSFER ACT, 1897.

(60 & 61 VICT. CAP. 65) (*i*).

An Act to establish a Real Representative, and to amend the Land Transfer Act, 1875. [6th August 1897.]

WHEREAS it is expedient to establish a real representative, and to amend the Land Transfer Act, 1875, in this Act referred to as "the principal Act:" 38 & 39 Vict. c. 87.

* * * * *

PART I.

Establishment of a Real Representative.

* * * * *

PART II.

Amendments of the Land Transfer Act, 1875.

* * * * *

Registration of small holdings. 55 & 56 Vict. c. 31.

19.—(1.) Where a county council apply in pursuance of section ten of the Small Holdings Act, 1892 (*k*), for registration as proprietors of land, they may be registered as proprietors of that land, with any such title as is authorised by the principal Act.

(2.) Where a county council, after having been so registered, transfer any such land to a purchaser of a small holding, the purchaser shall be registered as proprietor of the land with an absolute title, subject only to such incumbrances as may be created under the Small Holdings Act, 1892, and in any such case the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances shall be in damages only, and such damages shall be recoverable against the county council (*l*).

(*i*) The bulk of the subject-matter of this Act lies far outside the scope of this work. Part I. of the Act (which is wholly omitted) provides for the vesting of the real estate of a deceased person, like his leaseholds, in his personal representatives. Part II. amends the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), in many particulars, thereby facilitating the registration of the title to land and its transfer in the land registry, and further detailed amendments are set out in the First Schedule. Section 19 is the only clause of Part II. which directly affects county councils (when acting under the Small Holdings Act, 1892, *ante*, p. 547). Part III. relates to the introduction of *compulsory* registration of title; it is included on account of the power given by s. 23 (6) to a county council to place their veto upon the introduction of the compulsory system into their county. Part IV. s. 22 deals with the making of rules and fee orders as to transactions in the land registry; s. 23, relating to the Yorkshire Registries of Deeds, is set out.

(*k*) See this section, *ante*, p. 553, and the note thereto, where the effect of the present section is explained.

(*l*) Whether the title of the county council is absolute, qualified, or possessory, the title of their transferee, the purchaser of a small holding, is to

Part III.

Compulsory Registration and Insurance Fund.

Sect. 20 (1). Power to require registration of title on sale.

20.—(1.) Her Majesty the Queen may, by Order in Council, declare, as respects any county (*m*) or part of a county mentioned or defined in the Order, that, on and after a day specified in the Order, registration of title to land is to be compulsory on sale, and thereupon a person shall not, under any conveyance on sale executed on or after the day so specified, acquire the legal estate in any freehold land in that county, or part of a county, unless or until he is registered as proprietor of the land (*n*).

(2.) In this section the expression "conveyance on sale" means an instrument executed on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under the principal Act.

38 & 39 Vict. c. 87.

(3.) The title with which a proprietor of freehold land is registered in pursuance of this section shall be not less than a possessory title; but nothing in this section shall prevent any

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be registered as absolute, and is not to be disturbed even by a person claiming by title paramount to the county council; any such person may, however, recover damages from the county council. It seems desirable, therefore, that the county council should, where possible, obtain registration with an absolute title in the first instance.

(*m*) "County" is defined by sub-s. (11) of this section, *post*.

(*n*) On November 26th, 1897, notice was given to the London County Council (under sub-s. (5), *infra*) of a draft order under this section, making registration of title to land compulsory on sale "as respects the county of London on and after July 1st, 1898." It will be observed that this notice was given before this Act came into operation (see s. 25, *post*), presumably under the power contained in s. 37 of the Interpretation Act, 1889. The county council considered the draft order on February 15th, 1898, and placed no veto upon it. The draft order provided that it might be "amended or added to or repealed by Order in Council." On May 17th, 1898, notice appeared in the "London Gazette" that it was proposed to submit to Her Majesty the draft of an Order in Council declaring that registration of title to land is to be compulsory on sale in the county of London. The draft order accompanying the notice provides for the application of compulsory registration to different portions of the county on different dates as shown by the schedule to the order, which is as follows:—

Portions of the County.	Days on and after which Registration of Title to Land is to be compulsory on sale.
The parishes of Hampstead, Saint Pancras, Saint Marylebone, and George's, Hanover Square	September 1st, 1898.
The parishes of Shoreditch, Bethnal Green, Mile End Old Town, Wapping, Saint George's in the East, Shadwell, Ratcliff, Limehouse, Bow, Bromley, and Poplar	January 1st, 1899.
The remainder of the county (not including the city of London) north of the centre line of the River Thames except North Woolwich	October 1st, 1899.
The remainder of the county not including the city of London	January 1st, 1900.
The city of London	July 1st, 1900.

This draft order is also expressed to be subject to amendment. It does not appear that any fresh notice was given to the London County Council as to this order; but perhaps it is to be treated as an amendment of the draft already considered by that council, which draft, as above appears, was in wider terms than the later one.

person from being registered with any other title if the registrar is satisfied of his title. Sect. 20 (3).

(4.) It shall be lawful for Her Majesty in Council to revoke or vary any Order made under this section.

(5.) In the case of every Order proposed to be made under this section, notice shall, six months before the Order is made, be given to the council of the county to which such Order is proposed to be applied. A draft of the proposed Order, together with the name of at least one place within or conveniently near to the county where a district registry office will be established, shall accompany the notice, and shall also be published in the Gazette (*o*).

(6.) If within three months after receipt of the draft the county council, at a meeting specially called for the purpose, at which two-thirds of the whole number of the members shall be present, resolve, and communicate to the Privy Council their resolution, that in their opinion compulsory registration of title would not be desirable in their county, the Order shall not be made (*o*).

(7.) The first Order made under this section shall not affect more than one county (*o*).

(8.) Except as to a county or part of a county which shall have signified through the county council of such county, pursuant to a resolution of such council passed at a meeting at which two-thirds of the whole number of the members shall be present, its desire that registration of title shall be compulsorily applied to it, no further Order shall be made under this section, and in any case no further Order shall be made under this section until the expiration of three years from the making of the first Order. Provided that in the case of an Order made under this sub-section the provisions of sub-section (6) shall not apply (*p*).

(9.) Every Order of Council made under this section shall, within thirty days from the date thereof, if Parliament be then sitting, or within twenty days from the commencement of the next session, if Parliament be not sitting, be laid on the table of both Houses of Parliament, and if within forty days of any order being so laid an Address in either House disapproving of such order be carried, such Order shall be void and of no effect.

(10.) Any Order made under this section shall be made with due regard to the utilisation (if practicable) of any land registry existing in the county to which compulsory registration is proposed to be applied or in any adjoining county (*q*).

(*o*) See last preceding note.

(*p*) The effect of this section is that the compulsory provisions cannot be applied beyond the area affected by the order of the year 1898 until the year 1901, and then only upon the request of a county council. The compulsory provisions are experimental only.

(*q*) See note (*n*) *supra*.

Sect. 20 (11). (11.) For the purposes of this section the word county shall have the same meaning as in the Local Goverment Act, 1888, and shall include a county borough; and the word county council shall include the council of such borough (*r*).

51 & 52 Vict. c. 41.

(12.)—(i.) In the event of any portion of a county or part of a county as regards which an Order has been made under this section being included in another county or in a county borough as regards which no Order has been made under this section, such Order shall cease to be in force within such included portion of the county,

(ii.) In the event of any portion of a county or part of a county as regards which no Order has been made under this section being included in another county or in a county borough as regards which an Order has been made under this section, such Order shall apply to such included portion of the county (*s*).

21. * * * * * (*t*).

Part IV.

Miscellaneous.

22. * * * * * (*u*).

Provision for the Yorkshire registries of deeds.

23.—(1.) At any time after the passing of this Act, and subject to the provisions of section twenty of this Act, the Lord Chancellor may enter into an agreement with the county council of any of

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(*r*) "County" is not defined by the Local Government Act, 1888, except as *not* including the county of a city or county of a town, *ante*, p. 171; apparently the reference in the text is to the definition in that Act, s. 100, of "administrative county," *ante*, p. 172. It has been doubted whether an order making registration of title compulsory can be made as to the city of London: but if "county" in this Act be taken to mean administrative county it seems that such an order may be made, for the "metropolis" (which includes the city) is an administrative county. See Local Government Act, 1888, s. 40 (1), *ante*, p. 88, and definition of "metropolis" *ib.* s. 100, *ante*, p. 172. It will be observed that the city of London is dealt with in the draft order referred to, *ante*, p. 744, note (*n*).

(*s*) This section provides for the alteration of the area of compulsory registration in cases where the boundaries of a county or borough affected by an order under this section are altered, as they may be under s. 54 of the Local Government Act, 1888, *ante*, p. 108.

(*t*) Section 21 relates to the creation of an insurance fund for providing indemnity in cases of error, etc., in the Land Registry.

(*u*) Section 22 relates mainly to the making of rules and regulations and fee orders under this Act and the Land Transfer Act, 1875. The rules in force at the moment of writing this note are those of December 24th, 1875, January 1st, 1889, and November 23rd, 1891, as modified by the Provisional Land Transfer Rules, 1897, made under both Acts at the end of the year 1897, and set out 42 Sol. J. 146. But general rules under both Acts have been prepared by the rule committee appointed under this section, and will shortly come into force; a draft of these rules appears in the Weekly Notes, April 30th, 1898. They do not appear to make any special provision for the registration of title to Small Holdings or to rescind the Land Registry (Small Holdings) Rules, 1892; but these last mentioned rules appear to require some revision so as to bring them into accordance with the provisions of s. 19 of this Act, *ante*, p. 743.

the three ridings of Yorkshire for the transfer of the business of the local deed registry established in that riding to the office of land registry (*x*).

(2.) The agreement shall be drawn up in accordance with the principles of sections one, three, and four of the Land Registry (Middlesex Deeds) Act, 1891 (*y*), which provided for the transfer of the Middlesex registry of deeds to the land registry, and shall, after approval by the Treasury, take effect accordingly. 54 & 55 Vict. c. 64.

(3.) The whole of the property, assets, and liabilities of the county council, in relation to the local registry, shall be included in the transfer, and shall be taken over by the State at a price to be specified in or ascertained under the terms of the agreement, but no sum shall be payable for compensation in respect of any future loss of fees consequent upon such transfer.

(4.) Unless and until an agreement as aforesaid is concluded the county council may from time to time, at intervals of five years, in the event of their suffering loss, owing to the business of the local registry being diminished by reason of the principal Act and this Act, apply to the Treasury for compensation, and the Treasury shall award such compensation accordingly.

(5.) The compensation shall be made by the payment of a capital sum to the county fund to be determined in case of dispute by arbitration in the usual way on the basis of the receipts and expenditure in respect of the local registry during the three years previous to the claim being made, and that the county fund shall not be placed in a worse financial position by the operation of the Act.

(6.) All payments under this section shall be made out of moneys to be provided by Parliament.

24.—(1.) All hereditaments, corporeal and incorporeal, shall be deemed land within the meaning of the principal Act and this Act, except that nothing in this Act shall render compulsory the registration of the title to an incorporeal hereditament, or to mines or minerals apart from the surface, or to a lease having less than forty years to run or two lives yet to fall in, or to an undivided share in land, or to freeholds intermixed and indistinguishable from lands of other tenure, or to corporeal hereditaments parcel of a manor, and included in a sale of the manor as such. Interpretation.

(2.) In this Act the expression "personal representative" means an executor or administrator.

(*x*) As to the Yorkshire registries of deeds (which must not be confounded with registries for registration of titles under the Land Transfer Acts, 1875 and 1897), see Local Government Act, 1888, s. 46 (4) and note *ante*, pp. 100, 101.

(*y*) The sections referred to provide for the transfer of the Middlesex registry of deeds to the Land Registry for the vesting in Her Majesty for the public service of the registers and other property of the Middlesex registry, and for the taking over of necessary officers and for pensions, allowances, etc.

Sect. 25.

Commencement of Act.

25. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-eight.

Short title and construction.

26. This Act may be cited as the Land Transfer Act, 1897, and shall be construed as one with the principal Act, and that Act and this Act may be cited together as the Land Transfer Acts, 1875 and 1897.

SCHEDULES (*z*).

* * * * *

(*z*) The First Schedule contains minor amendments of the Land Transfer Act, 1875 ; the Second Schedule gives a scale of registration fees to be paid in districts where registration is compulsory ; this scale is, however, liable to alteration by the rule committee.

PART IV.

Orders, Circulars, and other Official Documents relating to the powers and duties of County Councils.

ADJUSTMENT.

The following is the final report of the Commissioners appointed under the Local Government Act, 1888 (s. 61, *ante*, p. 118).

To the Queen's Most Excellent Majesty.

May it please Your Majesty,

We, the Commissioners appointed under the Local Government Act, 1888, desire humbly to present to Your Majesty a report of our proceedings in executing the several duties laid upon us by that Act and by subsequent legislation.

The duties laid upon us by the Local Government Act were as follows:—

(1.) To make equitable adjustments respecting the distribution of the proceeds of the Local Taxation Licences and Probate Duty Grant, and respecting all other financial relations between the county boroughs specified in the Third Section to the Act and the counties in which, for the purposes of the Act, they were respectively deemed to be situate, should such adjustments not have been made by agreement between the several county and borough councils within twelve months after April 1st, 1889.

(2.) To determine, until final adjustments were made, the proportions in which the payments out of the Local Taxation Account were to be made to such counties and county boroughs.

(3.) In default of agreement, to determine the number of members of the council of a county borough which should be members of the visiting committee of a county lunatic asylum, or to make a new arrangement in respect to any such county asylum, should any of the contributory councils desire it, and the other council or councils refuse to agree to the same.

(4.) In default of agreement between the respective county councils, to apportion the property, debts, and liabilities of the

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counties of Kent, Middlesex, and Surrey between the portions of those counties situate within the Metropolis and the portions situate outside the same.

(5.) To determine in regard to the retention by the justices of any property, should difference arise between the justices and the county council in respect to such retention.

The following additional duties were laid upon us by subsequent legislation, viz. :—

(6.) By the Local Taxation (Customs and Excise) Act, 1890, to make an equitable adjustment between counties and county boroughs respecting the distribution of the proceeds of the residue of the Local Taxation (Customs and Excise) duties.

(7.) By the Local Government Board's Isle of Wight (County) Order, 1889, confirmed by the Local Government Board's Provisional Order Confirmation (No. 2) Act, 1889, to make, in default of agreement within four months after April 1st, 1890, an equitable adjustment of financial relations between the county of Southampton and the county of the Isle of Wight.

(8.) By the Local Government Board's City of Oxford Order, 1889, confirmed by the Local Government Board's Provisional Orders Confirmation Act, 1889, to make, in default of agreement within twelve months after November 9th, 1889, an equitable adjustment respecting the above-mentioned distributions and respecting all other financial relations between the county of Oxford and the county borough of Oxford.

(9.) By the Local Government Board's Borough of Grimsby Order, 1890, to make, in default of agreement within six months after November 9th, 1890, an adjustment similar to the above between the county of Lincoln (parts of Lindsey) and the county borough of Grimsby.

(10.) By the under-mentioned Acts and Orders to make the adjustments necessitated by the extensions of certain county boroughs in default of agreements within the periods therein respectively limited for the purpose, as follows, viz. :—The Burnley Corporation Act, 1889; the Swansea Corporation Act, 1889; the Walsall Corporation Act, 1890; the Local Government Board's City of Canterbury Order, 1890; City of Coventry Order, 1890; City of Manchester Order, 1890; Borough of Great Yarmouth Order, 1890; and Borough of Huddersfield Order, 1890.

(11.) By the Local Government Board's Borough of Newport Order, 1891, to make in default of agreement within three months after November 7th, 1891, an adjustment as directed by such order between the county of Monmouth and county borough of Newport.

The addition made to our duties by the several Acts of Parliament and Provisional Orders last mentioned, and the delay on the part of some of the authorities in bringing their cases before us after the termination of the periods fixed for the making of the adjustments

by agreement, rendered it necessary that the duration of the Commission, at first limited to December 31st, 1890, should be from time to time extended, and by the Expiring Laws Continuance Act, 1890, it was continued to December 31st, 1891, and, by the same Act of 1891, to June 30th, 1892. Report.

As instances of the magnitude of the interests affected by some of the adjustments, it may be mentioned that out of the 4,805,940*l.* 7*s.* 1*d.** paid from the Local Taxation Account in the financial year ended March 31st, 1890, no less an amount than 3,176,740*l.* 1*s.* 1*d.*† was payable on behalf of the counties and county boroughs between which the distributions were to be severally adjusted. And with regard to the other financial relations between counties and county boroughs, contributions of such large amount were, under the terms of the Act, ceasing to be paid by the boroughs to the county funds, that in the case of the county of Lancaster sums exceeding in the aggregate 350,000*l.* have under our awards been directed to be paid as equitable provision for their cessation. The properties to be apportioned were also in some instances of considerable magnitude. The three lunatic asylums belonging to the county of Middlesex, and now transferred to the county of London, viz.:—Colney Hatch, Hanwell, and Banstead, together with the site and foundations of the new asylum in course of construction at Claybury, were valued by agreement for the purposes of the apportionment at the sum of 1,247,000*l.*

The first of the matters referred to us which demanded our attention was the apportionment to counties and county boroughs of the interim payments out of the Local Taxation Account pending the final settlements. Most of the counties and county boroughs were able to agree in recommending the proportions requisite for this purpose, and the proportions so recommended were temporarily adopted. These proportions are shown in Appendix A. of this report. It subsequently became evident, when we had determined the general principles of adjustment, that in some cases the proportions so adopted were giving a result materially different from that which would be produced by the application of such principles. In these cases the proportions at first adopted were, as soon as possible, varied, and in the final settlement all sums paid under the interim apportionment were brought into account.

	£	*s.*	*d.*
* Local Taxation Licences	2,994,419	8	7
Probate Duty Grant	1,811,520	18	6
Total	4,805,940	7	1

	£	*s.*	*d.*
† Local Taxation Licences	2,057,683	5	6
Probate Duty Grant	1,119,056	15	7
Total	3,176,740	1	1

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At the termination of the twelve months after April 1st, 1889, the period limited by the Local Government Act for the making of settlements by agreements between the several councils, it was found that in five counties only had such settlements been made. Such counties, with the county boroughs therein situate, are as follows:—

Counties.	County Boroughs.
Lincoln (parts of Lindsey)	Lincoln.
Leicester	Leicester.
Northumberland	Newcastle.
Surrey	Croydon.
Worcester	Dudley.
	Worcester.

We had, therefore, to make the adjustments in the cases of twenty-two out of the twenty-seven counties, and fifty-five out of the sixty-one county boroughs specified in the Third Schedule of the said Act, as well as in the other previously mentioned cases from time to time referred to us by Acts of Parliament and Provisional Orders of the Local Government Board.

Several other of the counties and county boroughs found themselves after the termination of the above-mentioned twelve months in a position to agree upon terms of settlement; and in all cases in which such agreements were made, the terms so arranged were accepted by us for the purpose of our awards, and such agreements are recited or referred to in the Orders by which the final settlements were made. Such orders will be found at the end of the minutes of evidence.

For the purpose of obtaining the necessary information to enable us to make the several adjustments, we invited each of the councils concerned to state in writing the matters upon which our decision was required, and also, should they desire to do so, to send representatives to address us in reference thereto. As the adjustments were of an unprecedented character, and involved issues of the magnitude previously mentioned, and as the directions contained in the statute under which we were acting appeared to be very variously interpreted by the different councils concerned, we acceded to the generally expressed wish of the councils that they should be allowed to appear by counsel.

Our first meeting was held on April 12th, 1889, and we have sat on fifty-eight days. On thirty-nine of these we listened to the arguments addressed to us on behalf of the councils of the counties and county boroughs, the majority of which, as will be seen from the shorthand notes of the proceedings, were represented by eminent counsel. The details of our proceedings on such thirty-nine days are contained in the minutes of evidence annexed to this Report.

Local taxation licenses

In determining the adjustment respecting the distribution of the proceeds of the Local Taxation Licences and Probate Duty Grant,

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and probate duty grant.

we were directed to have regard to the consideration that the county was not to be placed in any worse financial position by reason of the boroughs therein being constituted county boroughs, and that a county borough was not to be placed in a worse financial position than it would have been in if it had remained part of the county, and had shared in the division of the sums received by a county in respect of the licence duties and the probate duty grant.

It was difficult to ascertain what would have been precisely the financial position of a county borough had it remained part of a county; but it was obvious that in sharing in the division of the sums received by a county in respect of the licence duties and probate duty grant, each county borough, where several such boroughs were contained in one county, would have shared upon the same terms as the rest, and that it was therefore necessary to make not only the adjustment between county and county borough directly contemplated by the Act, but also an adjustment between the several county boroughs situate in the county.

The difficulty in ascertaining the precise financial position of a county borough had it remained part of the county, arose from the following facts: By section 23 (2) (ii.) (iii.) of the Local Government Act, the county council would have had to make to or on behalf of the local authorities within the borough the payments specified in sections 24, 26, and 35 (5) of that Act, that is to say, by sections 24 and 35 (5), payments in substitution for all local grants previously received except the grant on account of main roads, and, by section 26, a payment to guardians in respect of the costs of union officers. The remainder of the proceeds of the local taxation licences and probate duty grant would, by section 23 (2) (iv.), have been transferred to the general purposes account of the county fund. By section 11 (1) the whole cost of the maintenance of the main roads in the borough would have been defrayed by the county council as a general county purpose, and under section 35 (4) (*b*), the borough council might have been able to obtain from the county council or from the Local Government Board a declaration that some of the roads within the borough were main roads.

We were of an opinion that an attempt to determine by a number of special inquiries what roads within the county boroughs would have been declared main roads had such boroughs remained parts of the counties in which, for the purposes of the Local Government Act, they were respectively deemed to be situate, and what additional roads within the county area would also have been declared main roads, and to appraise the annual cost of maintenance of such roads, would have caused great delay and expense, and could have produced no satisfactory result.

On the other hand, from an inspection of the amounts received by counties and boroughs in respect of the several grants made out of the Exchequer prior to the passing of the Act, it was apparent to us that if, in making the adjustment, we should take into consideration

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the grants mentioned in the above-mentioned sections 24, 26, and 35 (5), while neglecting the grant formerly received in respect of main roads, we should be giving to the county boroughs and taking away from the counties the grants from which respectively they had in the past derived the greatest benefit.

It appeared to us that it was not the intention of the Local Government Act that any special relief received by a local area from the Exchequer grants prior to the passing of the Act should be excluded from the adjustment.

After careful consideration of the provisions of the Act, and the arguments addressed to us, we determined that an equitable adjustment of the distribution of the proceeds of the Local Taxation Licences and Probate Duty Grant between each county and the county boroughs deemed to be therein situate would be effected by giving to such several authorities in each year the annual amount received prior to the passing of the Local Government Act out of the grants discontinued after the passing of that Act,* together with the amount payable under the above-mentioned section 26, and dividing the remainder in proportion to the rateable values of the county and boroughs. We also determined that the figures of the various amounts should be fixed for a period of five years, or until altered under the provisions of section 32 (6) of the Local Government Act, and for this purpose we adopted for the discontinued grants the figures of the shares certified by the Local Government Board under section 22 of the last-mentioned Act to have been received by the counties and boroughs respectively during the financial year ending March 31st next before the passing of the Act out of the grants theretofore made out of the Exchequer in aid of local rates which ceased to be granted after the passing of the Act; and for the grants to be made under section 26 we adopted the figures of the sums payable by counties and county boroughs in the year ending March 31st, 1890. And, as the salaries of poor-law medical officers would be included in both such grants, we deducted from the discontinued grants, as above defined, the amounts included therein on that behalf. For the ratio of rateable values we adopted the figures agreed for this purpose between the respective councils, or, in default of any such agreed ratio, the figures of the poor rate valuations in force at Lady Day, 1889.

A statement showing all the figures above referred to, and the effect of the adjustments made either by our awards or by the agreements of the councils, in respect of the financial year ended March 31st, 1890, is contained in Appendix B. of this report, and in Appendix C. is a further statement comparing the relief in the £ afforded to the ratepayers by the grants received out of the Exchequer in the year ended March 31st, 1888, and the relief in the £ afforded by the proceeds of the Local Taxation Licences and Probate Duty Grant distributed as shown in the previous tables.

* Such grants included the half cost of main roads.

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Local Taxation (Customs and Excise) Duties.

In those cases in which terms of adjustment had been settled by agreement between the parties for the distribution of the proceeds of the residue of the Local Taxation (Customs and Excise) Duties under section 1 (1) (b) of the Local Taxation (Customs and Excise) Act, 1890, we have adopted such terms, and in default of any such agreements we determined that such proceeds should be distributed between the county and borough councils in the same manner as the remainder of the proceeds of the Local Taxation Licences and Probate Duty Grant above referred to, viz., in the ratio of rateable values fixed for the purposes of the adjustment.

Other financial relations.

The adjustment of the financial relations between counties and county boroughs other than the distribution of the proceeds of the Local Taxation Licences and Probate Duty Grant, and of the proceeds of the residue of the Local Taxation (Customs and Excise) Duties, was a matter fraught with special difficulty.

By sub-section (1) of section 32 of the Local Government Act such adjustment was to provide in case of any expenses which might in future be incurred by the county wholly or partly on behalf of the borough for the liability of such borough to contribute, and, save as provided by the Act, any existing liability to contribute or to incur expense was, after the appointed day, to cease, and an equitable provision for such cessation was to be made in the adjustment.

By sub-section (3) of the same section it was directed that in such adjustment regard should be had (1) to the property, debts, and liabilities connected with the financial relations of the county and borough; (2) to the consideration that the county was not to be placed in a worse financial position by reason of the boroughs therein being constituted county boroughs; and (3) to the amount of benefit and value of the services which the borough received in return for existing contributions.

In the majority of cases the amounts contributed by the boroughs appeared to us to exceed the amount of benefit and value of the services rendered to the borough by the county, since the boroughs contributed for several purposes in respect of which they had themselves provided their own separate establishments. On the other hand, had they remained in the counties, they would have continued to be liable to contribute towards the same purposes and in the same manner as before the passing of the Act. Consequently we found it difficult to reconcile the direction that the county was not to be placed in a worse financial position by reason of the boroughs therein being constituted county boroughs, and at the same time to have regard to the amount of benefit and value of the services which the boroughs received in return for existing contributions.

The established rule of construction required that some effect should be given to every consideration to which the Act provided that regard should be had. It appeared to us that this could only be done by making the two considerations meet each other half way.

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With regard to county bridges and with regard to main roads in county boroughs not having separate courts of quarter sessions on April 1st, 1889, we were unable to say that the value of the service rendered to the boroughs by the counties was less than the contribution which the boroughs were liable to make, seeing that access to and from the boroughs was by roads and bridges outside their own boundaries. It therefore appeared to us that the third consideration above referred to did not in this case apply, and that we must have regard only to the consideration that the counties should not be placed in any worse financial position by reason of the boroughs therein being constituted county boroughs.

The conclusions at which we had arrived were communicated to the councils concerned in a memorandum, of which the substance is contained in the following paragraphs, and such councils were invited to settle by agreement the figures requisite for our awards.

As to the salaries of county officers, towards which a county borough had been liable to contribute before the appointed day, if such officers should in future render no service to the county borough, the liability of the borough to contribute would cease, and equitable provision for such cessation was to be made in the adjustment.

We determined that the amount of the annual contribution made by the boroughs towards such salaries should be estimated on an average of the sums contributed on that behalf, and that the payment of a capital sum representing fifteen years' purchase of such amount should constitute an equitable provision for the cessation of liability in respect thereof.

And as to the salaries paid to county officers in respect of services which in future would be rendered partly on behalf of a county borough, the value of the services which the borough would in future receive were to be settled either by agreement or by our decision, and in respect of such value the borough was to continue to contribute.

From the amount of the annual contribution theretofore made, the amount of the continuing annual contribution was to be deducted, and with regard to the remainder, we determined that fifteen years' purchase should constitute an equitable provision for the cessation of liability to contribute.

County bridges.

In the matter of county bridges, we determined that the equitable provision for the cessation of the liability of a borough to contribute and of the county to incur expense should be based upon the principle that each such liability should be valued, and the balance of the cost of the one liability over and above that of the other should be paid by the borough council to the county council, or by the county council to the borough council, as the case might be.

In estimating the respective values of such liabilities, the average annual expenditure of the county for the ten years prior to the appointed day was to be ascertained, and the boroughs were to be

deemed to have been liable to contribute towards such expenditure in proportion to the rateable values agreed or determined for the purposes of the adjustment, and the county was to be deemed to have been liable to expend upon the county bridges within the borough the average annual amount expended during the same period. **Report.**

The balance of the cost of the one liability over and above that of the other we declared to be the net annual liability for the cessation of which equitable provision was to be made, and we determined that thirty years' purchase of such annual liability should be the equitable provision for the cessation thereof.

Main roads.

With regard to main roads, we determined that the equitable provision for the cessation of liability should be based upon the same principles as had been laid down in the case of county bridges, and in estimating the respective values of the liabilities, the county boroughs which had not separate courts of quarter sessions on the appointed day should be deemed to have been liable to contribute rateably towards one-fourth part of the total main road expenditure of the entire county (excluding quarter sessional boroughs), and the county should be deemed to have been liable to contribute to the borough one-fourth part of the cost of maintaining the main roads within the borough.

Miscellaneous expenses, including parliamentary registration.

Towards such expenses as would in future be incurred by the county wholly or partly on behalf of a county borough, the borough would remain liable to contribute.

The amount of the continuing annual contribution was to be settled either by agreement or by our decision, and deducted from the amount of the average annual contribution made in respect of such expenses prior to the appointed day. Of the difference between such amounts, we determined that the payment of fifteen years' purchase should constitute an equitable provision for the cessation of liability to contribute.

We determined that the value of the contributions should be calculated upon an average of the three complete financial years prior to April 1st, 1889; but in the case of county bridges we made a distinction, and based our awards upon a ten years' average, upon the ground that, while the number of bridges had remained almost constant throughout that period, the annual expenditure upon them had in some cases varied greatly from year to year.

We determined that the expense in future to be incurred by the county on behalf of a county borough in respect of the registration of parliamentary voters should be estimated in accordance with the apportionment contemplated by section 14 (1) of the Registration Act, 1885.

Continuing contributions.

With regard to any sums which a county borough remained liable to contribute under section 32 of the Local Government Act in respect of expenses which would in future be incurred by a county wholly or partly on behalf of the borough, we intimated that if any agreement were made to commute such contribution for a capital

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sum, we were prepared to make our award in the terms of such agreement. But, in default of any such agreement, we were of opinion that we must decline to make any such commutation.

County property.

Several boroughs having claimed a share in property which, by the operation of the Local Government Act, had become vested in the county council, we declared that such claim existed only in respect of any share of beneficial interest or occupation of which the boroughs had been deprived by the operation of that Act, and that no borough had been deprived of any such share in the case of the following and similar buildings, viz., county hall, courts of justice and offices, judges' house or lodgings, and court-houses.

With regard to militia store-houses and any other county property of which the rents were applied on account of the county rate, we determined that such property should be either retained by the county at a valuation or realised within six months of the date of the award, and that the council of any county borough which had contributed to the cost of such property should receive a proportion of the ascertained value thereof, or of the proceeds of sale, calculated upon the respective rateable values of the county and county borough agreed for the purposes of the adjustment, or, in default of such agreed rateable value, in proportion to the poor rate valuations in force at Lady Day, 1889.

The effect of our communicating our decisions to the parties was that in many cases the amounts to be included in our awards were settled by agreement. Where they could not be so settled we charged our secretary to visit the localities for the purpose of discussing with the parties the several items of the adjustment, and upon his report based our final awards.

In any case in which between any county and county borough an arrangement had been made that any continuing annual contribution, for services still to be rendered by the county, should cease upon agreed terms of redemption, we have included such arrangement in our award.

In the case of any continuing contribution, if the parties could agree to fix the annual amount thereof, we included such fixed amount in our award, bearing in mind that under section 32 (6) of the Local Government Act such amount, should it have become inequitable, might be readjusted after the termination of a period of five years.

Where county boroughs had received grants of separate courts of quarter sessions after the appointed day and before the making of our awards, if the redemption contemplated by section 32 (3) (b) of the Act were arranged by agreement and application made to us to include the terms thereof in our award, we did not in any case refuse to make such inclusion.

County lunatic asylums.

In the absence of an agreement between all the parties, we have not thought it within our province to disturb existing arrangements in regard to county lunatic asylums, if the only object sought were

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to alter the proportions of contribution settled by law. In cases, however, where it appeared to us expedient that one or other of the contributing authorities should provide separate accommodation for its pauper lunatics, we made orders directing that such separate accommodation should be provided, and proper compensation be made to the outgoing authority for the loss of its share in the asylum. In determining the amount of such compensation we had regard to the amount of accommodation of which such authority was being deprived.

Where applications were made to us to fix the number of members of the council of a county borough which should be members of the visiting committee of the county asylum, we fixed such number in proportion to the current annual contribution payable by the borough as compared with that payable by the county towards the building, furnishing, and repairing of the asylum.

The arguments addressed to us in relation to the making of such new arrangements and fixing of such numbers are contained in the minutes of evidence of our fourth, twelfth, thirty-third, and thirty-sixth days' proceedings, and to such minutes of evidence the orders made will be found annexed.

In the case of the Sussex County Lunatic Asylum an important legal question arose as to the extent of the authority conferred upon us by the Local Government Act. This question we deemed it expedient to submit for counsel's opinion, and the case submitted and the opinion given are annexed to the minutes of evidence of our thirty-sixth day's proceedings.

The London and Surrey County Councils were able to settle by agreement the apportionment of property, debts, and liabilities under section 40 (7) of the Local Government Act between the portion of the county of Surrey situate within the metropolis and the portion situate outside the metropolis.

In the apportionment under the same section between the portions of the county of Middlesex, the majority of the items were included in an agreement made between the London and Middlesex County Councils, and in default of complete agreement, the apportionment having been referred to us for settlement, we made an order giving effect to certain parts of the agreement and dealing with the other matters at issue.

The London and Kent County Councils, in default of agreement, applied to us to determine the principles upon which the apportionment should be made, and, after our decision had been given, settled by agreement the details which are included in our order.

County borough extensions

In the adjustment respecting the cost of maintaining the main roads in areas added to county boroughs after April 1, 1889, we took into account the liability of the county for the whole cost of such roads as provided by section 11 of the Local Government Act, and having distributed to each authority out of the proceeds of the Local Taxation Licences and Probate Duty Grant, a sum equivalent to one

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half of the yearly cost of the maintenance of main roads in the county area and borough area respectively, we determined that the difference between one half the average annual cost of maintenance of the main roads in the area added to the borough and the rateable share of the said area in one half of the annual cost of the main roads of the county should be the annual liability for the cessation of which equitable provision was to be made.

The sums fixed by the Treasury under the provisions of section 61 (6) of the Local Government Act for the payment of the costs of the Commission, amounting in the aggregate to 5,371*l.*, are shown in Appendix D. All such sums have been received by us from the councils of the counties and county boroughs therein mentioned, and the amounts so received have been paid by us into the Exchequer, as contemplated by the above-mentioned sub-section of the Act.

We have not deemed it necessary to set out in this report the various contentions put forward on behalf of the councils interested in the several adjustments, as such contentions and the arguments by which they were supported are contained in the shorthand notes of our proceedings.

It will suffice to say that careful attention has been given to the various views presented to us, and that in arriving at our decisions regard has been had to the considerations commended to our notice by the Act, and every effort made to render such decisions, within the meaning of the Act, a final settlement of the various matters to which they relate.

The orders giving effect to our decisions, signed by the Chairman of the Commission on our behalf, and issued under our authority, will be found annexed to the minutes of evidence taken in each case.

We desire to express our acknowledgment of the ready and courteous assistance received from the Local Government Board in furnishing the statistical and other information for which we had on frequent occasions to apply to them, and also our sense of the able and assiduous efforts made by the officers of the county and borough councils to bring about a satisfactory settlement of the difficult questions arising in the adjustments and to supply the details of contribution and expenditure necessary for the preparation of our final awards.

We also desire to record our deep sense of the zeal and ability displayed by our secretary, Mr. Gaskell, in the discharge of the onerous and complicated duties which have devolved upon him.

All which we humbly submit to your Majesty's gracious consideration.

August 15th, 1892.

DERBY.
GEORGE SHAW LEFEVRE.
JOHN L. WHARTON.
FRANK MOWATT.
JOSEPH JOHN HENLEY.

BORROWING,

(*And see* "COUNTY STOCK.")

General Order.

COUNTY COUNCILS: LOANS FOR PURPOSE OF ADVANCES TO PARISH COUNCILS (*a*).

GENERAL ORDER OF 5TH NOVEMBER, 1895.

To the County Councils of the several Administrative Counties in England and Wales, other than the County Council of London: And to all others whom it may concern.

Whereas by sub-section (2) of section 12 of the Local Government Act, 1894, it is enacted as follows:—

"(2.) A county council may lend to a parish council any money which the parish council are authorised to borrow, and may, if necessary, without the sanction of the Local Government Board, and irrespectively of any limit of borrowing, raise the money by loan, subject to the like conditions and in the like manner as any other loan for the execution of their duties, and subject to any further conditions which the Local Government Board may by general or special order impose."

Now, therefore, We, the Local Government Board, do hereby order that any loan raised by a county council in pursuance of the above-recited sub-section for the purpose of lending to a parish council any money which such parish council are authorised to borrow shall be subject, in addition to the conditions applied by such sub-section, to the following further conditions; namely,—

(1.) The loan raised by the county council shall be discharged within a term ending not later than one year after the date at which the parish council are required to pay off the money lent to them.

(2.) The money lent to the parish council shall be repayable by them to the county council by equal yearly or half-yearly instalments of principal or of principal and interest combined.

(3.) If the whole or any part of an instalment of principal is not paid by the parish council to the county council within six months after the date on which the instalment is due, the county council shall set apart out of the county fund the amount of such instalment by which the parish council are in default, and shall apply the same in repayment of the loan by means of which the moneys lent to the parish council were raised or in redemption of stock if the loan has been raised by stock. If the amount due from the parish council is thereafter received by the county council from the parish council, the amount shall be applied in recouping the county fund the amount set apart out of such fund.

(*a*) See s. 12 (2) of the Local Government Act, 1894, *ante*, p. 610.

General Order.

(4.) Subject to article 3, all sums received by the county council from the parish council for principal shall be applied only in repayment of the loan by means of which the moneys lent to the parish council were raised, or in the redemption of stock if the loan has been raised by stock.

(5.) All sums which in pursuance of article 3 or article 4 are required to be applied in redemption of stock shall be transferred to the redemption fund, loans fund, or other fund or account to which, under the provisions of the Acts or regulations in force for the time being in the county governing the issue and redemption of stock by the county council, sums required to be applied in redemption of stock are to be paid.

(6.) Subject to article 3, all sums received by the county council from the parish council for principal and not forthwith applied as required by article 4 shall be invested by the county council in securities in which sums so applicable may lawfully be invested, and the county council may from time to time vary any such investments.

Given under the Seal of Office of the Local Government Board, this Fifth day of November, in the year One thousand eight hundred and ninety-five.

(L.S.) HENRY CHAPLIN,
President.

HUGH OWEN,
Secretary.

THE FOLLOWING CIRCULAR WAS ISSUED WITH THE FOREGOING ORDER :—

SIR,—I am directed by the Local Government Board to draw attention to the power conferred on county councils with respect to lending money to parish councils and to raising loans for this purpose.

Sub-section (2) of section 12 of the Local Government Act, 1894, provides that "a county council may lend to a parish council any money which the parish council are authorised to borrow, and may, if necessary, without the sanction of the Local Government Board, and irrespectively of any limit of borrowing, raise the money by loan, subject to the like conditions and in the like manner as any other loan for the execution of their duties, and subject to any further conditions which the Local Government Board may, by general or special order, impose."

It will be observed that a county council can only lend money to a parish council which the latter are authorised to borrow, and consequently a county council cannot make an advance unless the parish council have obtained the consent of the county council and of the Board to the borrowing of the money as required by sub-section (1) of section 12 of the Act.

When, however, a parish council have obtained these consents, it will be competent for the county council to lend them the money which they are authorised to borrow, and the county council may advance the loan either from money in the county fund at the time or from money obtained by a loan raised for the purpose. If the county council have recourse to a loan, they may borrow without the sanction of the Board, and irrespectively of any limit imposed upon their borrowing by sub-section (2) of section 69 of the Local Government Act, 1888, or otherwise. In other respects the loan must be raised subject to the like conditions and in the like manner as any

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other loan for the execution of the duties of the county council. The loan, however, is also to be subject to any further conditions which the Board may by general or special order impose, and the Board have thought it desirable to issue a General Order prescribing such further conditions as appear to them to be necessary. Six copies of the Order are enclosed.

The conditions imposed by the Order are that the loan shall be discharged not later than one year after the date at which the parish council are required to pay off the advance made to them, that the money lent shall be repayable by the parish council by equal yearly or half-yearly instalments of principal or of principal and interest combined, and that if the parish council should fail to pay the whole or part of an instalment within six months after the instalment is due, the county council shall set apart out of the county fund the amount by which the parish council are in default, and shall apply that amount in repayment of the loan raised for the purpose of the advance or in redemption of stock if the loan has been raised by stock. On the receipt from the parish council of the amount by which they were in default, the county fund is to be recouped the amount set apart as above mentioned.

Subject to this, all sums received by the county council from the parish council for principal are to be applied only in repayment of the loan or in redemption of stock, as the case may be. All sums required to be applied in redemption of stock are to be transferred to the fund or account to which under the Acts or regulations in force in the county governing the issue and redemption of stock, sums required to be applied in redemption of stock are to be paid. Any sums received for principal and not forthwith applied in repayment of the loan or in redemption of stock, as the case may be, are to be invested in securities in which such sums may lawfully be invested. The investments may from time to time be varied by the county council for others of a like kind.

I am, Sir,
Your obedient Servant,
HUGH OWEN,
Secretary.

The Clerk to the County Council.

COUNTY STOCK.

Order in Council under section 70 *of the Local Government Act,* 1888, *ante,* p. 135 (*a*).

At the Court at Balmoral, the 26th day of September, 1891.

Present, the Queen's most Excellent Majesty in Council.

Whereas the Local Government Board have, in virtue of the powers conferred upon them by "The Local Government Act, 1888," made certain Regulations apply to the creation, issue, transfer, and redemption of, and other dealings with, any county stock which any County Council create under the Local Government Act, 1888, in exercise of any statutory borrowing powers as defined in the said Regulations:

And whereas the said Regulations have, as required by the said Act, been laid before both Houses of Parliament for the period of

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(*a*) The regulations confirmed by this Order are amended by regulations confirmed by an Order of August 3rd, 1897, which is set out, *post,* p. 793.

Order in Council.

thirty days, and no resolution has been passed by either House that such Regulations ought not to be proceeded with :

Now, therefore, Her Majesty having taken the said Regulations (copy whereof is hereunto annexed) into consideration, is pleased, by and with the advice of Her Privy Council, to confirm, and doth hereby confirm, the said Regulations.

C. L. Peel.

Regulations referred to in the foregoing Order :—

THE LOCAL GOVERNMENT ACT, 1888.

Regulations as to Issue of County Stock.

To the County Councils of the several Administrative Counties in England and Wales, other than the County Council of London ;—

And to all others whom it may concern.

Whereas by sub-section (8) of Section 69 of the Local Government Act, 1888, it is enacted that where the County Council are authorised to borrow any money on loan they may raise such money by stock issued under the said Act or by the other methods mentioned in the said sub-section ;

And whereas by Section 70 of the said Act it is enacted as follows :—

"70.—(1.) County Stock may be created, issued, transferred, dealt with, and redeemed in such manner, and in accordance with such regulations, as the Local Government Board may from time to time prescribe.

"(2.) Without prejudice to the generality of the above power, such regulations may provide for the discharge of any loan raised by such stock, and in the case of consolidation of debt for extending or varying the times within which loans may be discharged, and may provide for the consent of limited owners and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section, with or without modifications, any enactments of the Local Loans Act, 1875, and the Acts amending the same, and of any Act relating to stock issued by the Metropolitan Board of Works, or by the corporation of any municipal borough.

(3.) Such regulations shall be laid before each House of Parliament for not less than thirty days during which such House sits, and if either House during such thirty days resolves that such regulations ought not to be proceeded with, the same shall be of no effect, without prejudice, nevertheless, to the making of further regulations.

"(4.) If no such resolution is passed, it shall be lawful for Her Majesty by Order in Council to confirm such regulations, and the same when so confirmed shall be deemed to have been duly made and to be within the powers of this Act, and shall be of the same force as if they were enacted in this Act." Regulations

Now, therefore, We, the Local Government Board, in pursuance of the powers given to Us by the above-cited Section, Do hereby Order and Prescribe as follows:—

The Regulations herein-after contained shall, from and after the confirmation thereof as aforesaid, apply to the creation, issue, transfer, and redemption of, and other dealings with any county stock which any County Council create under the Local Government Act, 1888, in exercise of any Statutory borrowing power as defined in Article 1.

Preliminary.

Article 1.—In these Regulations— Interpretation.

The County Council means the County Council exercising under these Regulations the power of borrowing by the creation of stock; "The county council."

Stock, unless the context otherwise requires, means county stock created by the County Council under these Regulations; "Stock."

The Board means the Local Government Board; "The Board."

The Bank of England means the Governor and Company of the Bank of England; "The Bank of England."

Revenues of the County Council includes the revenues of the County Council from time to time arising from any land, undertakings, or other property for the time being of the County Council, and rates or contributions leviable by or on the precept of the County Council; "Revenues of the County Council."

Statutory borrowing power means any power, whether or not coupled with a duty, of borrowing, or continuing on loan, or re-borrowing money, or of redeeming or paying off, or creating or continuing payment of or in respect of any annuity, rentcharge, rent, or other security representing or granted in lieu of consideration money, for the time being existing under any Act of Parliament, public or local, passed or to be passed, or under any Provisional Order confirmed by Act of Parliament passed or to be passed, or under these Regulations, or under any order or sanction of any Government department made or given, or to be made or given, by authority of any Act of Parliament passed or to be passed; "Statutory borrowing power."

Statutory security means any security in which trustees are for the time being by or under any Act of Parliament passed or to be passed authorised to invest trust money, except any security of the County Council, and any other mortgage, "Statutory security."

Regulations

bond, debenture, stock, annuity, rentcharge, rent, or other security authorised by or under any Act of Parliament passed or to be passed, or under these Regulations, of any Local Authority as defined by Section 34 of the Local Loans Act, 1875 (*b*), except as before excepted, and except securities payable to bearer;

"Interest."

Interest includes instalments of an annuity and half-yearly or other payments of or in respect of a rentcharge, rent, or other security.

Creation and Charge of Stock.

Creation of stock.

Article 2.—(1.) Where the County Council have for the time being any statutory borrowing power, then, subject and according to the provisions of these Regulations, the County Council may from time to time by resolution exercise the power by creation of redeemable stock, to be from time to time issued for such amount within the limit of the power, at such price, being not lower than ninety-five per centum, to bear such half-yearly or other dividends, and to be so transferable, that is to say, in books or by deed, as the County Council by the resolution direct: Provided that, subject to any Regulation which the Board may make amending these Regulations, all stock at any time and from time to time so created shall be created on and subject to such terms and conditions as that the same shall form one and the same class of stock, bearing one and the same rate of dividend, and shall become redeemable as herein-after provided after the expiration of the same period from the first creation of the stock (*c*).

(2.) All stock at any time and from time to time so created shall rank equally without any priority or preference by reason of any precedence in the date of any statutory borrowing power, or in the date of creation of any portion of stock, or in the date of issue of any portion of stock, or on any other ground whatsoever, and shall (unless otherwise expressed in the resolution for creation of the stock) also rank equally with all other securities of the County Council created or granted in pursuance of any statutory borrowing power at any time after the date of the first creation of any stock.

(3.) After the expiration of such a period from the creation of the stock as the Board shall determine, the stock shall be redeemable at par, at the option of the County Council, and within such a period (not exceeding forty years) from the first creation of the stock as the

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(*b*) According to the definitions of "local authority" and "rate" in the section referred to, a parish council appears to be a local authority within this article; so that moneys standing to the credit of the redemption fund account and requiring investment under Article 12, *infra*, may be invested upon the security of a loan to a parish council. See s. 12 of the Local Government Act, 1894, *ante*, p. 610.

(*c*) The creation of stock of different classes is permitted by Article 1 of the amending regulations of 1897, *post*.

Board shall determine, the whole of the stock shall be redeemed or purchased and extinguished. Regulations

(4.) Each resolution for creation of stock shall specify after what period the stock thereby created is redeemable at par, and within what period the stock is to be redeemed or purchased and extinguished.

(5.) The stock shall be designated by such name as the County Council in the resolution for creation of the stock shall, with the approval of the Board, determine.

Borrowing power to be exerciseable for actual sum raiseable.

ARTICLE 3.—Each statutory borrowing power of the County Council shall be construed to authorise the County Council to create such an amount of stock and from time to time to issue such nominal amounts thereof as will, in the aggregate, according to the price of issue, produce the actual amount of money for the time being lawfully raiseable by the County Council under that power, or some portion of that actual amount, or (as the case may be) the actual amount of money properly payable by the County Council as consideration on payment off or redemption by the County Council of any mortgage, bond, debenture, stock, annuity, rentcharge, rent, or other security.

Charge of stock.

ARTICLE 4.—(1.) All stock for the time being issued and the dividends thereon shall be and the same are by virtue of these Regulations charged indifferently on the county fund and all the revenues of the County Council.

(2.) The dividends for the time being payable on all stock shall rank equally with interest on all other securities of the County Council created or granted in pursuance of any statutory borrowing power at any time after the date of the first creation of any stock, and the same dividends and interest shall, subject to all charges existing at that date, be the first charge on the county fund and all the revenues of the County Council.

CONSOLIDATION OF LOANS.

Consolidation of loans

ARTICLE 5.—The Board may approve a scheme for the consolidation for the purpose of the repayment of all or any of the loans raised by the County Council under all or any of the statutory borrowing powers of the County Council (*d*), whether existing at the date of these Regulations or not, and any such scheme shall fix the period or periods within which the loans so consolidated shall be discharged, and for that purpose may extend or vary any period allowed for the payment off of such loans by the statutory borrowing powers: Provided that the Board, in approving the period or

(*d*) Loans previously raised by stock and loans included in any previous consolidation scheme may be included in a scheme under this article. See Article 2 of the amending regulations of 1897, *post*.

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periods as aforesaid, shall have due regard to the amounts of the several loans and the periods allowed for the payment off of such loans respectively by the statutory borrowing powers.

Payment of Dividends.

Payments to dividends funds account.

Article 6.—For the payment of dividends on the stock there shall in each year be carried to an account of the county fund, entitled the Stock (Dividends) Fund Account (herein-after referred to as the dividends fund account) (*e*), a sum or sums equal to the aggregate amount of all dividends payable during the year.

Charge of sums carried to dividends fund account.

Article 7.—Of the sums carried to the dividends fund account such as represent the dividends payable in respect of stock raised for general county purposes shall be charged to the general county account of the county fund, and such as represent the dividends payable in respect of stock raised for any special county purpose shall be charged to the special county account to which expenditure for that purpose is properly chargeable.

Payment and charge of dividends.

Article 8.—The County Council shall, from time to time, pay the dividends on the stock, and charge the same to the dividends fund account.

Redemption of Stock.

Payments to redemption fund account.

Article 9.—For redemption and extinction, or purchase and extinction, of the stock there shall be carried to an account of the county fund, entitled the Stock (Redemption) Fund Account (herein-after referred to as the redemption fund account) (*e*), a sum or sums equal to the aggregate amount of all sums payable in the year for redemption and extinction, or purchase and extinction, of the stock.

Charge of sums carried to redemption fund account.

Article 10.—Of the sums carried to the redemption fund account such as represent sums payable for the redemption or purchase of any amount of stock raised for general county purposes shall be charged to the general county account of the county fund, and such as represent sums payable for the redemption or purchase of stock raised for any special county purpose shall be charged to the special county account to which expenditure for that purpose is properly chargeable.

Amounts to be carried to redemption fund account.

Article 11.—(1.) (*f*) The several amounts to be carried to the redemption fund account (subject to any reduction thereof authorised

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(*e*) As to the keeping of separate Stock (Dividends) Funds Accounts and Stock (Redemption) Funds Accounts for different classes of stock, see Article 1 (2) (3) of the amending order of 1897, *post*.

(*f*) As to cases in which clauses (1) and (4) of this article will not apply, see Article 3 of the amending regulations of 1897, *post*, p. 795.

by these Regulations) shall be determined by the provisions either of paragraph (a), paragraph (b), or paragraph (c) of this clause, according as the Board shall determine :— Regulations

(a.) The said amounts shall be the same as would under the statutory borrowing power have been payable towards paying off the money represented by the stock, or to a sinking fund for the repayment of the same, if the same had been raised otherwise than by the issue of stock; provided that if the moneys payable as aforesaid were not required to be accumulated, the Board may determine what the several amounts to be carried to the redemption fund account shall be, having regard to the rate at which the moneys carried to the redemption fund account will be accumulated.

(b.) The said amounts shall be such amounts as will, with accumulations at compound interest at a rate per centum per annum to be determined by the Board, be sufficient, after payment of all expenses, to purchase the amount of stock at par within the time within which, under the statutory borrowing power, the money represented by the stock is to be repaid: Provided that the board may from time to time, if they think fit, alter such rate of interest.

(c.) If the statutory borrowing power in exercise of which the stock is issued does not determine the amounts to be paid towards paying off or to a sinking fund in respect of the money to be borrowed thereunder, or the period within which the same is to be repaid, or if the board approve a scheme for the consolidation of all or any of the loans to be raised by the issue of stock, the several amounts to be carried to the redemption fund account shall be such amounts as will, with accumulations at compound interest at a rate per centum per annum to be determined by the Board, be sufficient, after payment of all expenses, to purchase the amount of stock at par within such time, not exceeding forty years from the first creation of the stock, as the Board shall determine; Provided that the Board may from time to time, if they think fit, alter such rate of interest.

(2.) If it appears to the Board at any time that any sum carried to the redemption fund account will not be sufficient to redeem the amount of stock in respect of which the same is carried to the said account within the time allowed for the continuance of the loan represented by the stock, the said sum shall be increased to such extent as the Board may direct; and the Board shall at any time have power to consent to the reduction of any sum to be carried to the redemption fund account as aforesaid, either temporarily or permanently, in any case in which it appears to the Board that the same would be more than sufficient to redeem the amount of stock in

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respect of which it is carried to the said account within the time allowed for the continuance of the loan represented by the stock; and if at any time the amount carried to the redemption fund account is, in the opinion of the Board, sufficient, with the accumulations to arise thereon, to redeem the stock within the time or times allowed for the continuance of the loan or loans represented by the stock, the County Council may, with the consent of the Board, cease to carry any sums to the redemption fund account.

(3.) If the County Council create and issue stock for the purpose of defraying the expenses of the creation and issue of any stock, the amount of stock created and issued for that purpose shall be redeemable and extinguished after and within the same periods after and within which the stock is to be redeemed and extinguished for the purpose of defraying the expenses of which it was so created and issued; and, for the purpose of determining the sums to be carried to the redemption fund account as aforesaid, the amount of the said expenses shall be deemed to be the amount of a loan authorised by a statutory borrowing power, and required to be paid off within the period within which the stock is to be extinguished.

(4.) (*g*) If, before the expiration of the period allowed for the continuance of any loan represented by an amount of stock, the County Council apply, in the redemption or purchase and extinction of stock, to that or any less amount, any part of the money carried to the redemption fund account, then a sum equal to the interest which the part of such moneys so applied would have produced at the rate per centum on which the payments of the redemption fund account are calculated shall, in each year, until the expiration of the said period allowed for the continuance of the loan, be carried to the redemption fund account, and charged to the account of the county fund properly chargeable with the sums carried to the redemption fund account in respect of the amount of stock aforesaid.

Provided that if any amount of stock extinguished by application of part of the moneys carried to the redemption fund account as aforesaid is purchased by the County Council at a rate exceeding One Hundred Pounds sterling for One Hundred Pounds stock, the interest to be carried to the redemption fund account under this part of this Article shall be calculated as if only One Hundred Pounds sterling had been applied out of such moneys for each One Hundred Pounds stock purchased, and the County Council shall either carry to the redemption fund account, during the year in which such purchase is made, an additional sum or sums equal in amount to the sum or sums paid in excess of the said rate for the purchase of stock in such year, or shall, during such year and each succeeding year until the expiration of the period allowed for the continuance of the loan represented by the stock extinguished, carry to the redemption fund account such additional sum as the Board shall approve; and such

(*g*) See note (*f*), *ante*, p. 768.

additional sum or sums shall be charged to the account of the county fund properly chargeable with the sums carried to the redemption fund account in respect of that amount of stock. Regulations

* * * * * (*h*).

Article 12.—The sum standing to the credit of the redemption fund account shall from time to time be applied by the County Council in redeeming stock according to the terms of issue and purchasing stock for extinction, and, pending such application, shall be invested on statutory securities, and the interest and annual proceeds arising from those securities shall be carried to the redemption fund account, and be invested and accumulated in like manner. Investment and application of sums carried to redemption fund account.

Article 13.—The County Council on redeeming or purchasing any stock shall forthwith pass a resolution directing the stock so redeemed or purchased to be cancelled by the registrar, and on such cancellation the same and all dividends thereon which have not already become payable shall be and the same are by virtue of these Regulations extinguished. Extinction of stock redeemed or purchased.

Conversion of other Securities into Stock.

Article 14.—(1.) Where any mortgage, bond, debenture, stock, annuity, rentcharge, or other security granted or created before or after the date of these Regulations under any statutory borrowing power is outstanding or payable, and the County Council have power, with the consent of the holder of that security, or otherwise, to pay off the amount thereby secured or represented, or to redeem the same, they may pay off or redeem the security accordingly with money raised by stock, or they may, with the consent of the holder thereof, issue stock in substitution for the security. Payment off or substitution for existing securities.

Provided that as regards any loans specified for the purposes of this provision in an Order of the Board, the Board may, in such Order, require the foregoing powers of this Article to be exercised as far as practicable *pari passu* with respect to all such loans and in such a manner as not to extend the period approved under these Regulations for the payment off of such loans on consolidation.

(2.) The County Council may in every such case make such reasonable payment as they may think fit to the holder of any security for his consent, or for otherwise compensating him for the payment off or redemption of or substitution for his security, and any such payment may be either in money or stock, or partly in one and partly in the other (*i*).

(*h*) For the provision substituted for the last paragraph of this article, see Art. 5 of the amending regulations, *post*, p. 796.

(*i*) Stock may be issued for the purpose of raising money to be paid under this clause, but subject to the provisions of Art. 4 of the amending regulations of 1897.

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(3.) In every such case of payment off redemption or substitution the County Council shall forthwith carry to the redemption fund account the whole or a proportionate part (as the case may require) of any money and securities forming part of any sinking fund applicable to the discharge of the security, and also such further sum, if any, as may be necessary to make the money and securities so paid and transferred equivalent to the amount which should have been in such sinking fund, or should have been paid off, in respect of the security for the payment off or redemption of which or in substitution for which the stock is created.

(4.) Where the holder of the security is one of the persons described in Section 7 of the Lands Clauses Consolidation Act, 1845, and by that Act enabled to sell land thereunder, that person may consent to payment or redemption of, or substitution for, the money secured or represented by that security, and may accept money for giving that consent as if the person so consenting were the absolute owner of that security, and that person is hereby indemnified for so doing, and his receipt shall be a good discharge for the same.

(5.) Money received by the holder of any security as authorised by this Article, and stock issued to him in substitution for any security, shall be subject to the same trusts, powers, testamentary and other dispositions, provisions, and incumbrances, as the money secured or represented by the security was subject to, immediately before the payment off redemption or substitution, and every deed, or other instrument, or any testamentary, or other disposition, shall take effect with reference to the whole, or a proportionate part of the money or stock received, or substituted, as the case may be.

Effect on Borrowing Powers.

Extinction or suspension of power.

Article 15.—On the issue of any portion of stock the statutory borrowing power, in exercise whereof that stock is issued, shall be affected as follows ; namely,—

(a.) If the stock is issued for the whole term limited for the continuance of any loan, or for the continuance of payment of or in respect of any mortgage, bond, debenture, stock, annuity, rentcharge, rent, or other security granted or created under that statutory borrowing power, then that power, to the extent of the money raised by that stock (except in the case herein-after provided for), shall be and the same is by virtue of these Regulations extinguished ; but

(b.) If the stock is issued for part only of that term, then so much of the money raised by that stock as represents the balance which should be outstanding may be re-borrowed by the County Council for the residue of that term, or any part thereof, and so from time to time.

Application of Money raised.

General application of money from stock.

Article 16.—Money raised by stock shall be applied for purposes for which money raiseable under the statutory borrowing power, in exercise whereof the stock is issued, ought by law to be applied, and not otherwise.

Provided that if, after the raising of any money by stock under these Regulations, it shall be found that any part of such money is not required for the purposes to which it is applicable as aforesaid, the County Council shall carry the same to the redemption fund account or apply such money for such other purposes for which the County Council shall have a statutory borrowing power as the Board may, by Order, approve; and if any such money is so carried to the redemption fund account the statutory borrowing power in exercise whereof the stock represented by the money so paid was issued shall, to the amount of the money so paid, be deemed not to have been extinguished; and if any such money is applied for some other purpose as aforesaid the stock represented by the money so applied shall be deemed to have been created and issued under these regulations in exercise or part exercise of *such last-mentioned statutory borrowing power* (*k*).

Temporary investment of money raised by stock.

Article 17.—The County Council shall from time to time, if required by the Board, and may at any time invest temporarily on statutory securities any sum raised by stock and not for the time being applied to or required for the undertaking or purpose for which it is raised.

Registration and Certificates.

Appointment of registrar

Article 18.—(1). The County Council shall, on and subject to such terms and instructions not inconsistent with any provision of these Regulations as they think expedient, appoint and keep appointed an officer of the County Council, or any other person, or the Bank of England, or any other bank, or any banking or other company, as registrar for all or any of the purposes of these Regulations (in these Regulations referred to as the registrar).

(2.) The County Council in relation to these Regulations and the registrar shall respectively be deemed a banker within the Bankers Books Evidence Act, 1879.

Stock register.

Article 19.—(1.) The registrar shall keep books, in which shall be entered the names and addresses of holders from time to time of stock, and the amounts held by them (in these Regulations referred to as the stock register).

(*k*) For the words in italics read "the statutory borrowing power which the County Council could exercise for such other purpose": Art. 6 of the amending regulations of 1897.

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(2.) The stock register shall be *primâ facie* evidence of any matter entered therein in accordance with these Regulations, and of the title of the persons entered therein as holders of stock.

Certificates of proprietorship of stock.

ARTICLE 20.—(1.) On demand of a holder of stock the County Council may, if they think fit, give to him a certificate of the proprietorship thereof, under their common seal, specifying the amount of stock to which he is entitled (in these Regulations referred to as a stock certificate).

(2.) A stock certificate shall be *primâ facie* evidence of the title of the person therein named, his executors, administrators, successors, or assigns, to the stock therein specified; but the want of a stock certificate, if such want be accounted for to the satisfaction of the County Council, shall not prevent the holder of stock from disposing of and transferring the same.

(3.) If a stock certificate is worn out or damaged the County Council, on production thereof, may cancel it, and give a similar stock certificate to the party in whom the property in the stock certificate and in the stock therein specified is then vested.

(4.) If a stock certificate is lost or destroyed the County Council, on proof thereof to their satisfaction, may give a similar stock certificate to the party entitled to the certificate lost or destroyed.

(5.) An entry of the issue of a stock certificate or a substituted certificate, as the case may be, shall be made in the stock register.

TRANSFER.

Power for stockholder to transfer.

ARTICLE 21.—Subject to the provisions of these Regulations, every stockholder may transfer all or any part of his stock in books or by deed.

Transfer in books.

ARTICLE 22.—(1.) If and where the resolution for creation of any portion of stock makes the same transferable in books and not by deed, the provisions of this Article shall apply and have effect, but not otherwise.

(2.) The registrar shall keep books wherein transfers of stock so transferable shall be entered (in these Regulations referred to as the stock transfer books).

(3.) Every such entry shall be conceived in proper words for the purpose of transfer, and shall be signed by the party making the transfer, or, if he is absent, by his agent thereunto lawfully authorised in writing under his hand attested by a witness.

(4.) Where the Bank of England are the registrar they may, if they think fit, require that the agent be so authorised by power of attorney under the hand and seal of the party making the transfer, attested by two or more credible witnesses.

(5.) The person to whom a transfer is made may, if he thinks fit, underwrite his acceptance thereof.

(6.) Except as otherwise provided by Act of Parliament, and subject to the provisions of these Regulations respecting any portion of stock which the resolution for creation thereof makes transferable by deed and not in books, no mode of transferring stock other than that prescribed in this Article shall be good in law. Regulations

ARTICLE 23.—(1.) If and where the resolution for creation of any portion of stock makes the same transferable by deed, and not in books, the provisions of this Article shall apply and have effect, but not otherwise. Transfer by deed.

(2.) Every transfer of stock so transferable shall be by deed.

(3.) The deed of transfer shall relate only to the transfer, and shall not contain any recital, trust, power, or proviso whatsoever.

(4.) The deed of transfer, when duly executed, shall be delivered to and kept by the registrar, and the registrar shall enter a memorial thereof in a book to be called the register of transfers of stock, and shall endorse on the deed of transfer a notice of that entry.

(5.) * * * * * (*l*)

(6.) Until the deed of transfer has been so delivered to the registrar, the County Council or the registrar shall not be affected thereby, and the purchaser of the stock shall not be entitled to receive any dividend thereon.

ARTICLE 24.—(1.) The registrar, before allowing any transfer of stock, may, if the circumstances of the case appear to him to make it expedient, require evidence of the title of any person claiming a right to make the transfer. Evidence on transfer.

(2.) That evidence shall be a statutory declaration of one or more competent persons, or of such other nature as the registrar, with the approval of the County Council, may require.

ARTICLE 25.—(1.) The registrar, with the approval of the County Council, may, as regards any portion of stock, close the stock transfer books or the register of transfers of stock (as the case may be) on any day in the month next before that in which dividends on that portion of stock are payable, but so that the books be not at any time kept closed for more than fifteen days. Closing of transfer books.

(2.) The persons who on the day of such closing are inscribed as stockholders shall, as between them and their transferees of stock, be entitled to the dividend next payable thereon.

ARTICLE 26.—Unless the County Council have compounded for stamp duty, all stock shall, notwithstanding anything in any resolution of the County Council, be transferable by deed, and not in books, and every deed of transfer of stock transferable by deed shall be duly stamped, and the consideration shall be truly stated therein. Stamp duty on transfers.

(*l*) For the clause substituted for this clause see Art. 7 of the amending regulations of 1897, *post*, p. 797.

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Transmission.

Transmission on death.

ARTICLE 27.—(1.) The interest of a deceased stockholder in stock shall be transferable by his executors or administrators, notwithstanding any specific bequest thereof.

(2.) Where two or more persons are registered as owners of any stock, such persons shall be deemed to be joint owners with right of survivorship between them.

(3.) The County Council or the registrar shall not be required to allow any executors or administrators to transfer any stock until the probate of the will or the letters of administration to the estate of the deceased has or have been left with the registrar for registration, and may require all the executors who have proved the will to join in the transfer.

Transmission otherwise than by death of holder or transfer in books or by deed.

ARTICLE 28.—(1.) If the interest in any stock has become transmitted by any lawful means other than a transfer in books or by deed, or than the death of a stockholder, satisfactory evidence of the transmission shall be furnished to the registrar by a statutory declaration of one or more competent persons, or in such other manner as the registrar may, with the approval of the County Council, require.

(2.) The name of the person entitled under the transmission shall be entered in the stock register.

(3.) Until such evidence has been furnished, the County Council or the registrar shall not be affected by the transmission, and no person claiming by virtue thereof shall be entitled to receive any dividend on the stock.

(4.) In this Article the term transmission includes any case of apparent transmission in consequence of the change of name of the stockholder, although the actual ownership of the stock may remain unaltered.

Dividends.

Payment of dividends.

ARTICLE 29.—The County Council shall pay by the registrar the dividends on stock.

Dividends to executors, etc.

ARTICLE 30.—The County Council or the registrar shall not be required to pay any executors or administrators any dividend on stock held by their testator or intestate until the probate of the will or the letters of administration has or have been left with the registrar for registration.

Evidence of title.

ARTICLE 31.—The registrar before paying any dividend on any stock may, if the circumstances of the case appear to him to make it expedient, require evidence of the title of any person claiming a right to receive the dividend, and that evidence shall be a statutory declaration of competent persons, or of such other nature as the registrar, with the approval of the County Council, may require.

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Dividends to joint holders.

ARTICLE 32.—(1.) Where more persons than one are registered as joint holders of any stock, any one of them may give an effectual receipt for any dividend thereon, unless notice to the contrary has been given to the registrar by any other of them.

(2.) Where stock is standing in the name of an infant or person of unsound mind jointly with any person not under legal disability, a letter of attorney for receipt of the dividends on the stock shall be sufficient authority in that behalf if given under the hand and seal of the person not under disability attested by two or more credible witnesses, but the registrar before acting on the letter of attorney may, if he think fit, require proof to his satisfaction of the alleged infancy or unsoundness of mind by a statutory declaration of one or more competent persons.

Dividend warrants by post.

ARTICLE 33.—(1.) Where a stockholder desires to have his dividends sent to him by post, he may make a request for that purpose to the registrar in writing, signed by him in a form approved by the County Council, and shall give to the registrar an address in the United Kingdom, or in the Channel Islands, or the Isle of Man, to which the letters containing the warrants are from time to time to be sent.

(2.) The posting by the registrar of a letter containing a dividend warrant addressed to a stockholder at his request at the address so given by him shall, as respects the liability of the County Council and of the registrar, be equivalent to the delivery of the warrant to the stockholder himself.

(3.) Every warrant so sent by post shall be deemed a cheque, and the County Council and the registrar shall, in relation thereto, be deemed a banker within the Bills of Exchange Act, 1882.

(4.) Provided that this Article shall not apply to cases to which the provisions of Section 4 of the National Debt Act, 1889, apply.

STOCK CERTIFICATES WITH COUPONS TO BEARER.

Provisions respecting stock certificates with coupons to bearer.

ARTICLE 34.—(1.) On demand of a stockholder, the registrar may issue to the stockholder a stock certificate to bearer, that is to say, a certificate of title to his stock or any part thereof, entitling the bearer to the stock therein specified, and transferable by delivery with coupons entitling the bearer of the coupons to the dividends on the stock, but so that no such certificate or coupons shall give a title to dividends beyond the time limited for redemption of the stock.

(2.) A stock certificate to bearer shall not be issued in respect of any sum of stock other than Ten Pounds or a multiple of Ten Pounds.

(3.) No trustee shall apply for, purchase, take, or hold a stock certificate to bearer unless he is in express words authorised to do so by the instrument creating his trust, and any contravention of this provision by a trustee shall be deemed a breach of trust; but this provision shall not impose on the County Council or the registrar

Regulations

an obligation to inquire or to take notice whether a person applying for or holding a stock certificate to bearer is or is not a trustee, or subject the County Council or the registrar to any liability in case of his, with or without notice, issuing to a trustee a stock certificate to bearer, or invalidate any stock certificate to bearer issued.

(4.) Where a stock certificate to bearer is outstanding the stock represented thereby shall cease to be transferable in books or by deed.

(5.) The bearer of a stock certificate to bearer may, on delivery up to the registrar of the certificate, and of all unpaid coupons belonging thereto, require to be entered in the stock register as the holder of the stock described in the certificate under which he derives title, and thereupon such stock certificate and coupons shall be cancelled and the stock shall be re-entered in the register as transferable, and shall become and again be transferable in the stock transfer books or by deed, as the case may require, and shall, as regards the mode of payment of the dividends thereon, be in the like condition as if no stock certificate to bearer had been issued in respect thereof.

(6.) The coupons issued with a stock certificate to bearer shall comprise the dividends to be paid in respect of the stock therein specified for such period as the County Council approve.

(7.) At the end of that period fresh coupons may be issued for such further period as the County Council approve, and so for successive periods during the continuance in force of the stock certificate, but the County Council may direct the registrar, in lieu of issuing fresh coupons in respect of any stock certificate, to give in exchange a fresh stock certificate with coupons.

(8.) Payment to the bearer of a coupon of the amount expressed therein shall be a full discharge to the County Council and to the registrar from all liability in respect of that coupon and the dividend represented thereby.

(9.) Where the Bank of England are the registrar coupons shall be payable at the chief establishment of the Bank at the expiration of three clear days from the day of presentation, and at any branch establishment of the Bank situate more than ten miles from the chief establishment at the expiration of five clear days from the day of presentation.

(10.) If a stock certificate to bearer or coupon is worn out or damaged, the registrar, on production and delivery up thereof, may cancel it and issue a new certificate or coupon.

(11.) If a stock certificate to bearer or coupon is lost or destroyed, the registrar may issue a new certificate or coupon on receiving indemnity to the satisfaction of the County Council against the claims of all persons deriving title under the certificate or coupon lost or destroyed.

(12.) All coupons issued under these Regulations in respect of any stock certificate to bearer shall, for the purposes of the Acts relating

to stamp duties, be deemed to have been attached to and issued with such stock certificate. Regulations

(13.) Stock specified in a stock certificate to bearer shall be charged on the same securities, and be subject to the same powers of redemption and other powers, and save as regards the mode of transfer and of payments of dividends thereon, and save so far as a stock certificate to bearer is a negotiable instrument, shall be subject to the same incidents in all respects as if that stock had continued to be registered in the stock register as transferable in books or by deed.

GENERAL.

ARTICLE 35.—(1.) Stock is personal property. Nature of stock: notice of trusts.

(2.) Stock is not liable to foreign attachment by the custom of London or otherwise.

(3.) No notice of any trust, express, implied, or constructive, in respect of any stock, or of any stock certificate to bearer or coupon, shall be entered in the stock register, or in any other book kept by the County Council or the registrar, or be receivable by the County Council or the registrar, or affect the registrar or the County Council through the registrar or otherwise.

ARTICLE 36.—(1.) If at any time any dividend due on any stock remain unpaid for two months after demand in writing the person entitled thereto may apply to the High Court for a receiver, and the Court may, if it thinks fit, appoint a receiver on such terms as it thinks fit. Receiver.

(2.) The receiver shall have the like power of collecting, receiving, recovering, and applying all money which ought to be carried under these Regulations to the redemption fund account or to the dividends fund account, and of assessing, making, and recovering all rates and contributions for the purpose of obtaining the same, as the County Council or any officer thereof would or might have, and such other powers and such duties as the Court thinks fit, and shall apply all money so collected, after payment of expenses and costs, as the Court directs, for purposes of these Regulations.

(3.) The Court may at any time discharge the receiver, and shall have full jurisdiction over him and all persons interested in his acts.

ARTICLE 37.—A person taking or holding stock shall not be concerned to inquire or to take notice whether the creation or issue thereof was or was not within any statutory borrowing power of the County Council, or otherwise in accordance with these regulations, or whether or not the County Council or any meeting thereof was properly constituted or convened, or whether or not the proceedings at any meeting of the County Council were legal or regular, or to see to the application of any money raised by stock, or be answerable for any loss or misapplication thereof. Protection of holders of stock.

Regulations

Annual Return to Local Government Board.

ARTICLE 38.—(1.) Once in every year, at a time appointed by the Board, the Clerk to the County Council shall send to the Board an abstract of the accounts of the County Council relating to stock and of the redemption fund account and subordinate accounts in a form prescribed by the Board: and such abstract shall be verified by a statutory declaration of an officer of the County Council, if and as may be required by the Board, and such abstract shall be made up to such date in each year as the Board may determine.

(2.) Unless and until the Board in any case by Order otherwise direct, the said abstract shall—

(a.) Be made up to the Thirty-first day of March in each year;

(b.) Be forwarded to the said Board within forty-two days after that day;

(c.) Be in the form set forth in the Schedule B. to these Regulations; and

(d.) Be verified by a statutory declaration of the Clerk to the County Council, or of such other officer of the County Council as the Board may, on the application of the Council, approve.

(3.) In case of wilful default therein by the Clerk to or other officer of the County Council, the said Clerk or other officer shall on each occasion be liable to a penalty not exceeding Twenty Pounds, and every fine under this Article shall be recoverable summarily on the prosecution of the Board, and not otherwise.

(4.) If by any such abstract or otherwise it appears to the Board that the County Council have failed to comply with any requisition of these Regulations, or of any order of the Board thereunder, in relation to any payment, application, or investment, or otherwise in relation to stock or the redemption fund account, the Board may by Order require the County Council to make good the default within a time therein limited; and if the default be in respect of any sum to be carried to the redemption fund account, or the misapplication of any part of the moneys carried to that account, the Board may by Order direct that the sum in such Order mentioned, not exceeding double the amount in respect of which default has been made, shall be carried to the redemption fund account and be invested and applied in like manner as required by these Regulations in regard to other sums carried to that account.

Unclaimed dividends.

ARTICLE 39.—(1.) If at any time any dividend on any stock is unclaimed at the time for payment thereof the same shall, nevertheless, on demand at any subsequent time whatsoever, be paid to the person showing his right thereto, but without interest in the meantime.

(2.) Where any dividend remains unclaimed for five years from the time for payment thereof the County Council shall cause notice thereof to be sent by post in a registered letter addressed to the stockholder named in their books by the description and at the

address therein appearing, and so at the expiration of three other successive periods of five years. Regulations

(3.) At the end of every successive period of five years from the day when the first dividend becomes payable on stock first issued, the County Council shall publish an advertisement in a newspaper circulating in their County, stating what, if any, dividends on stock have then been unclaimed for more than four years, and the names and addresses appearing in the stock register of the persons entitled to such dividends when the same became due.

(4.) At the end of every successive period of ten years from the day when the first dividend becomes payable on stock first issued the County Council, unless it has been otherwise agreed between them and the registrar, may require the registrar to repay to them all dividends unclaimed during that period and then in his hands, and the County Council shall cause the same or any other dividends unclaimed during that period to be carried to the dividends fund account, and may deal therewith as they are by these Regulations empowered to deal with moneys carried to that account, without prejudice, nevertheless, to the rights of any person to those dividends.

Unclaimed stock.

ARTICLE 40.—(1.) If at the end of the period within which any stock is required to be extinguished the County Council, by reason of the holder of any of such stock not being forthcoming, or by reason of any doubt as to the ownership of any such stock, shall not be able to redeem, extinguish, and cancel such stock as required by the Regulations herein-before contained, the County Council shall invest on statutory securities a sum equal to the nominal value of all such stock as cannot be redeemed as aforesaid, such sum to be dealt with as herein-after prescribed, and thereupon such stock shall be deemed to have been extinguished.

(2.) If before the end of the period within which any stock is required to be extinguished the County Council shall have extinguished all the stock, except such as cannot be redeemed as aforesaid, the County Council may invest on statutory securities a sum equal to the nominal value of all such stock as cannot be redeemed as aforesaid, such sum to be dealt with as herein-after prescribed, and thereupon such stock shall be deemed to have been extinguished.

(3.) Any sums invested by the County Council as aforesaid shall, unless sold for the purpose of satisfying any claim in respect of the stock represented by the same, be kept invested on statutory securities for a period of ten years, after which time the County Council may appropriate the said sums and any accumulations thereon for such purposes as the Board may approve, without prejudice, nevertheless, to the rights of any person to the said sums or any part thereof.

Saving for power to borrow otherwise.

ARTICLE 41.—Nothing in these Regulations shall affect any power of the County Council to raise otherwise than by stock any money

Regulations which they do not think fit to raise by stock, but whenever, from time to time after the date of the first creation of stock, the County Council raise money otherwise than by stock, they shall cause to be given to each lender of money so raised notice in writing, signed by the Clerk or other authorised officer of the County Council, of the equality of charge which stock has or may have by virtue of these Regulations.

Saving for power of revocation.

ARTICLE 42.—The County Council may by resolution revoke at any time, in whole or in part, any resolution for creation of stock theretofore passed by the County Council if and as far as the same has not been acted on by the issue of stock thereunder, and notice of such revocation shall forthwith be given to the Board,

Saving for other obligations.

ARTICLE 43.—Except as in these Regulations expressly provided nothing in these Regulations shall relieve the County Council from any obligation imposed on them in relation to any statutory borrowing power by any Act of Parliament under or by which that power for the time being exists or is regulated.

Saving for power to sell lands, etc.

ARTICLE 44.—(1.) Nothing in these Regulations shall affect any power or duty of the County Council to sell, lease, or otherwise dispose of any land or property of the County Council, or to apply any purchase money or other money arising thereby in discharge of any charge on that land or property, or the revenues thereof, other than the charge of stock, or affect any claim of any person under such first-mentioned charge.

(2.) That land or property shall, in the hands of the purchaser or other person taking the same under the sale, lease, or other disposition, be by virtue of these regulations absolutely freed from the charge of stock, and he shall not be concerned to see to the application of that purchase money or other money, or be answerable for any loss or misapplication thereof.

Saving for existing securities.

ARTICLE 45.—Nothing in or done under these Regulations shall affect any security or charge created or granted or payable before and subsisting at the date of the first creation of any stock, and the County Council shall, whenever required by the holder of any security or charge aforesaid, apply all such money, do all such acts, exercise all such powers, collect all such money, and assess, make, and levy all such rates and contributions as they would or ought to have applied, done, exercised, collected, assessed, made, and levied for his benefit and security if these Regulations had not been prescribed.

Forgery.

ARTICLE 46.—(1.) Stock shall be deemed capital stock of a body corporate within the Act of the Session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty (chapter ninety-eight), "to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery."

(2.) A stock certificate to bearer and a coupon connected therewith shall be deemed a stock certificate and coupon within the Forgery Act, 1870. Regulations

Article 47.—Any determination or directions of the Board under these Regulations may be signified by Order under their Seal, and any Order of the Board may contain such provisions as the Board think necessary or proper for giving effect thereto, and shall be enforceable by writ of mandamus to be obtained by the Board out of the High Court, and may be from time to time cancelled or varied by the Board, as the circumstances of the case may require, but the Board shall not make any such Order without first hearing the County Council, if desirous of being heard, which hearing may be in the form of a public inquiry, with or without a published report, or in such other form as the Board, having regard to the circumstances, think just and expedient, and Sections 294 and 296 of the Public Health Act, 1875, shall apply to hearings, inquiries, and other proceedings to which this Article relates: Provided that the costs of inquiries as to which the Board may make Orders under the said Section 294 may include such reasonable sum, not exceeding three guineas a day, as the Board may determine, for the services of any Inspector holding an inquiry. Orders of Local Government Board.

Article 48.—Where the Bank of England are the registrar, they may, with the sanction of the County Council, from time to time issue any forms that may be required for carrying into effect the provisions of these Regulations, and may also from time to time make any Regulations that are not inconsistent with these Regulations relative to the following things, and, when made, may alter, vary, or repeal any such Regulations, and make other Regulations instead thereof, or in addition thereto, and any such Regulations for the time being in force shall be duly observed:— Regulations by Bank of England.

(a.) The period for which coupons are to be given:

(b.) The mode in which the Bank are to act in issuing stock certificates to bearer, or entering in the transfer books the bearers of stock certificates to bearer:

(c.) The mode of proving the title of or identifying any person applying for a stock receipt or stock certificate, or stock certificate to bearer:

(d.) With respect to anything necessary for carrying into effect the provisions of these Regulations which relate to or affect the Bank.

Article 49.—The forms given in the Schedule A. to these Regulations may be used for the purposes therein indicated, and the same, or forms to the like effect, with such variations or additions as circumstances require, shall be effectual for those purposes. Forms.

Article 50.—Fees not exceeding those specified in the said Schedule A. may be taken by or on behalf of the County Council in the cases therein mentioned. Fees.

Regulations

Expenses.

ARTICLE 51.—(1.) The expenses incurred by the County Council in or about the creation and issue of any amount of stock, *including any sum paid by them for composition for stamp duty thereon and any other expenses* (*m*) properly chargeable to capital, shall be deemed money raiseable under a statutory borrowing power.

(2.) Expenses of bookkeeping and management and other current expenses from time to time incurred by the County Council in the execution of these Regulations shall be defrayed as the ordinary expenses of the County Council are or may be defrayed, and shall be charged to the several Accounts of the County Fund in such proportions as the County Council, having regard to all the circumstances, may from time to time determine.

SCHEDULES.

SCHEDULE A.

FORMS.

(A.)

Resolutions on Creation of Stock.

County of [ ].

[, 189 .]

At a meeting of the County Council of [ ] holden on [day, the day of , 189] at [ ] o'clock in the noon in the [ ].

Present :

].

Resolved first—

That, subject to the regulations of the Local Government Board prescribed under the Local Government Act, 1888, the County Council do hereby in exercise of their powers create stock to be called [ ] Stock, and to be issued to an amount which shall be sufficient for the following purposes, but not exceeding [ ] pounds (£) :—

A. For raising the following sums (amounting in the aggregate to the sum of pounds which has not been raised), that is to say :—

(1.) The sum of pounds on account of the money which the County Council have authority to raise by borrowing under the powers conferred upon them by the [ ] for the purchase money for [ ] and the cost of re-construction of portions thereof ;

(2.) The sum of pounds on account of the money which the County Council have authority to raise by borrowing under the powers conferred upon them by the [ ] for the cost of construction of [ ] ;

(3.) The sum of pounds on account of the money which the County Council have authority to raise by borrowing under the powers conferred upon them by the [ ] for the construction of [ ] ;

(4.) The sum of pounds on account of the money which the County Council have authority to raise by borrowing under the powers conferred upon them by the [ ] for the purposes of [ ].

(*m*) For the words in italics read "so far as they are," Art. 8 of the amending regulations of 1897.

Schedule A.

B. For raising instead of re-borrowing the sum of pounds required by the County Council for the purpose of paying off when due sums amounting to pounds which will fall due before the [, 189], being a portion of their debts now subsisting on the security of outstanding securities granted by the [ ] for raising money for the purposes of the following Acts (that is to say) :—

and which sums the County Council are under those Acts authorised to re-borrow.

C. For raising the sum of pounds for paying off or redeeming statutory securities granted by the [ ] under the following Acts and now outstanding (that is to say) :—

D. For the purpose of issuing stock in substitution for statutory securities granted by the [ ] under the following Acts and now outstanding (that is to say) :—

Resolved secondly :—

That such stock shall be issued at the price, and shall bear the dividends, and be transferable in the manner herein-after specified (that is to say) :—

A. The minimum price of issue to be [£] per cent., the first dividend to be payable on the [1st January 189];

B. Tenders for stock to be made to . A deposit of 5 per cent. on the amount of stock tendered for to be paid at at the time of the delivery of the tender ;

C. The dates for the further payments on account of the said tenders when accepted to be as follows :—On [Wednesday, the 20th day of October, 189 , so much of the amount tendered and accepted as when added to the deposit will leave £75. (sterling) to be paid for each £100. of stock. On Friday, the 26th day of November, 189 , 25 per cent. On Tuesday, the 11th day of January, 189 , 25 per cent. On Tuesday, the 1st day of March, 189 , 25 per cent.] In case of default in the payment of any instalment at its proper date the deposit and instalments previously paid will be liable to forfeiture :

D. Dividends at £ per cent. per annum, payable [quarterly] ;

E. Dividends on the total amount of stock (calculated from the 1st of October, 189), to be payable on the 1st January, 189 .

F. Stock certificates to bearer with coupons attached for the dividends payable 1st January, 189 , and 1st April, 189 , to be issued in exchange for the provisional receipts.

G. In the event of the receipt of tenders for a larger amount of stock than that proposed to be issued at or above the minimum price, the tenders at the lowest price accepted to be subject to proportionate diminution.

H. Stock to be issued in sums of not less than £10.

J. Stock to be transferable in books and not by deed. (*See, however, Article* 26.)

Resolved thirdly—

That such stock shall be redeemable as follows : *state terms.*

Resolved fourthly—

That such stock shall be redeemed or purchased and extinguished within a period of years from the creation of such stock.

Resolved fifthly—

That an agreement be entered into with the Commissioners of Inland Revenue for the payment to them of composition under the provisions of the Customs and Inland Revenue Act, 1887, for the stamp duty on transfers of stock issued under the foregoing resolutions.

Schedule A.

(B.)

Stock Receipt.

[ ] Stock (£ per cent.)

Transfer days: Monday, Tuesday, Wednesday, Thursday, Friday, *Holidays excepted.*	Received this day of , 189 , of herein-after called the said transferee, the sum of being the consideration for interest or share in the [ ] Stock (per cent.) transferable at the , and all my property and interest in, and right to, the same, and the dividends thereon, by this day transferred unto the said transferee. Witness hand Witness	The Proprietors to protect themselves from Fraud are recommended to Accept, by themselves or their attorneys, all Transfers made to them. £ *s.* *d.*

[*Indorsement.*]

Notice to Holders of [ ] Stock (£ per cent.)

Payment of Dividends.

Dividends are due on [*the 1st January, 1st April, 1st July, and 1st October,*] unless the [*1st*] of either of these months falls on a Sunday, in which case the dividends will be payable on the following business day.

Dividends will be paid in one of the following modes :—

I. To the stockholders personally, or to their attorneys at the .

N.B.—Stockholders may arrange for the receipt of their dividends, free of charge, at [ ].

II. By transmission of dividend warrants by post, at the risk of the stockholder, under the following regulations :

1. Any stockholder residing within the United Kingdom, or in the Channel Islands, or the Isle of Man, who desires to have his dividend warrant sent to his address by post, must fill up a form of application, to be obtained at [ ].
2. In the case of joint accounts, the applications must be signed by all the members of the account, directing the warrant to be sent to one of them at a given address.
3. Post dividend warrants will be crossed & *Co.*, and will only be payable through a banker, They will be drawn to the order of the stockholder, and must be endorsed.

☞ Stockholders, whose warrants are sent by post, should give notice to [ ] if they are *not* received on the day on which they ought to be delivered ; but need not acknowledge those that arrive in due course.

Stock Certificates to Bearer.

Stock certificates to bearer, of the denominations of [£. 10 or any multiple of £. 10] with coupons for the quarterly dividends attached, may be obtained in exchange for inscribed stock, except in the case of stock held upon any trust.

(C.)

County Stock Certificate.

County of [ ].

Number

This is to certify that *A.B.* of [ ] is the proprietor of [ ] pounds of [ ] Stock subject to the regulations relating thereto.

Given under the common seal of the County Council of [ ] this [ ] day of [ ] [18].

Schedule A.

(D.)

Transfer in Books.

No.
Entered by
Witness to
the identity
of

[ ] STOCK (£ per cent,
this day of in the year of our Lord One thousand eight hundred and do assign and transfer interest or share in the [ ] STOCK (£ per cent.) transferable at the , and all my property and interest in, and right to, the same, and the dividends thereon, unto Executors, administrators, or assigns. Witness hand
Witness
do freely and voluntarily accept the above stock transferred to
Witness

£	s.	d.

(E.)

Application for Issue of Power of Attorney.

, the day of , 189 . From *A.B.* and *C.D.* [*the registered stockholders*

£ [ ] STOCK (£ per cent.)

To *G.H.* [*the intended Attorney*]

Examined by Dr. fol. Posted by Cr. fol. Posted by Transfer book.

(F.)

Power of Attorney for Sale and Transfer and for Receipt of Dividends.

Corporate Account.

[ ] STOCK.
ACCEPTANCE, SALE OF £ AND DIVIDENDS.

We
our attorneys and attorney
for us and in our name and on our behalf—

First—to ACCEPT all transfers made or to be made to us of any sum of [ ] Stock.

Secondly—to SELL and TRANSFER all or any part of the sum of said stock standing in our name in the books of the ;

Thirdly—to RECEIVE and GIVE RECEIPTS for all DIVIDENDS or PAYMENTS due or to become due on any sum of the said stock from time to time standing in our name in the books of the

AND ALSO—to do whatever is necessary or proper to be done for the purposes aforesaid, or any of them.

Schedule A.

In witness whereof we have hereunto affixed our corporate seal, this day of , in the year of our Lord one thousand eight hundred and

Sealed with the corporate seal and delivered in the presence of

N.B.—The execution of this letter must be attested by [two witnesses who are] not of the corporate body, and who must be present when the corporate seal is affixed.

Indorsement.

INSTRUCTIONS FOR EXECUTING THE WITHIN LETTER OF ATTORNEY.

Corporate Account.

The *date* must be inserted in *words* and not in figures.

The execution must be attested by [*two credible witnesses* who are] not of the corporate body, and who must add [their addresses and their qualities, professions, or occupations].

A *witness resident in a town* must give the No. of house as well as the name of the street.

If *clerks* or *servants* are witnesses they must give the names and addresses of their employers,

When a witness is a *female* she must state whether she is a *spinster*, *wife*, or *widow*; and if a *wife* she must give her husband's name, address and quality, profession, or occupation.

A *wife* is not a *valid witness* to the execution of this letter of attorney when her husband's name appears in the letter as attorney or transferee.

If any *alteration*, *interlineation*, *or erasure* be made in this letter of attorney, it must be particularly stated in the attestation, subscribed to by the witnesses, that such alteration, interlineation, or erasure was made previously to the execution of the letter.

I demand to act by this letter of attorney, this day of , 18 .

Witness

(G.)

Deed of Transfer.

County of [ ].

I, *A.B.*, of [ ] in consideration of the sum of [ ] pounds paid to me by *C.D.*, of [ ] (herein-after called the said transferee) do hereby transfer to the said transferee the sum of [ ] pounds [ ] stock standing [or part of the stock standing] in my name in the books of the County Council of [.] to hold unto the said transferee, his executors, administrators, and assigns [*or* successors and assigns], subject to the several conditions on which I hold the same at the time of the execution hereof, and I, the said transferee, do hereby agree to take the said stock subject to the same conditions.

As witness our hands and seals the [ ] day of [ ].

(H.)

Div. 000000.

DIVIDEND WARRANT.

[ ] STOCK.

(£ per cent.)

To the ONE QUARTER OF A YEAR'S DIVIDEND on the sum of

[ ] STOCK, due , 189 .

Less Property Tax at *d.* per £ - -

PAY SELF OR BEARER.

Examined

[ ].

Witness

Schedule A.

(I.)

Dividend Warrant by Post.

(1.)

[ ] Stock.
(£ per cent.)

Request for Transmission of Dividend Warrants by Post.

To the

A sum of £ [ ] Stock (£ per cent.) is now standing in name, as follows :— Amount.

"my" or "our."

Names, addresses, and descriptions as recorded in the books.

As the person entitled to the dividends upon the above-mentioned amount of stock hereby authorise [ ] in the name of to draw upon the [ ] for the amount of the quarterly dividends due and to become due on the said amount of stock, or on the amount for the time being standing in name : "I" or "we." "myself" or "our *nominee*." "my" or "our."

And hereby request the said [ ] to send through the post at risk, and until further notice, the warrants so drawn to— "I" or "we." "my" or "our."

Name
Present address

Sign Here. ———

In the case of joint stockholders, or of co-executors, all must sign.

If the account is a sole one, insert here the name and address of the stockholder; If the account is a joint one, insert here the name and address of one of the stockholders as *nominee*.

Date 189 .

[*On second half-sheet of same Form.*]

This half-sheet is to be retained by the stockholder. Reference to it will often save unnecessary correspondence.

Notice to Holders of [ ] Stock
(£ per Cent.)

Transmission of Dividend Warrants by Post.

Dividends upon the above-named stock may be transmitted through the post to the *stockholder* in sole accounts, and to *any one of the stockholders* in joint accounts, *at their risk* upon a form of request being duly filled up and forwarded to [ ]. (Forms are obtainable at [ ]).

N.B.—This arrangement does not apply to stockholders whose addresses are beyond the United Kingdom, the Channel Islands, and the Isle of Man.

Persons receiving dividends under letters of attorney cannot have the warrants for such dividends sent to them by post.

A separate form must be used for each separate holding of stock.

When forwarding a form of request, care should be taken to state the number of overdue dividends, if any.

Dividends are payable on [1*st January*, 1*st April*, 1*st July*, *and* 1*st October*].

When the [1*st*] happens on a Sunday, the dividends are not payable until the [2*nd*].

Forms of request may be delivered at any date, either by hand or through the post; but when received between the day on which the balance for a dividend is struck and the day on which the dividend is payable, the warrants for such *next* dividend will be forwarded as soon as possible, but the [ ] will not guarantee their being posted on the day before the dividend is payable.

For the dividend payable [1*st January*] the balance is struck on or about the [1*st December*].

For the dividend payable [1*st April*] the balance is struck on or about the [1*st March*].

Schedule A.

For the dividend payable [*1st July*] the balance is struck on or about the [*1st June*].

For the dividend payable [*1st October*] the balance is struck on or about the [*1st September*].

Warrants for overdue dividends will be forwarded as promptly as possible, but not necessarily by return of post.

Any change of address of the stockholder in sole accounts, or of the nominee in joint accounts, should be notified at once to [ ]. When any such notification reaches less than a fortnight before the next dividend is due, there may be a delay of a few days in the delivery of the warrant for such next dividend.

In the absence of any notification to the contrary, it will be taken for granted that dividend warrants have duly reached their destinations. When they are not received on the correct day, notice should be given to the [ ] without delay.

As postal dividend warrants are made payable to order, they must be indorsed ; they are crossed in blank, and consequently are only payable on presentation by a banker. ([ ] will not undertake to cross postal dividend warrants with the names of particular bankers).

Instructions to transmit warrants by post remain in force, although the stock may have been added to, or a part sold.

Stockholders selling stock by attorney, if they wish to continue to receive their dividends through the post, should instruct their bankers, or brokers, to obtain letters of attorney *for sale only*.

All communications with reference to postal dividend warrants should be addressed to [ ], and the postage should be prepaid.

(2.)

Div.
000000.

POST DIVIDEND WARRANT,
[ ] STOCK.
(£ per cent.)

To the
ONE QUARTER OF A YEAR'S DIVIDEND on the sum of

[ ] STOCK, due , 189 .
Less Property Tax at *d.* per £ - -

Pay or Bearer.
Examined
[ ].

The person to whom this warrant is payable must sign here. _____

Warrants outstanding more than six months after date are required to be sent to for verification before being presented for payment.

(K.)

Stock Certificate with Coupons to Bearer.

[ ] STOCK CERTIFICATE TO BEARER.
Dividend at £ per Cent. per annum.

£50 A00000

This is to certify that the bearer of this Certificate is entitled to FIFTY POUNDS [ ] Stock with dividend thereon at the rate of £ per Cent. per Annum transferable at [ ].

Dated , 189 .
Signed

Countersigned

A00000 £50

The Coupons attached to this Certificate are payable at [ ].

When the Coupons are exhausted this Certificate will be exchanged on presentation at [ ], for a new Certificate with fresh Coupons attached.

[*Coupons.*] **Schedule A.**

5 Div. [ ] STOCK.	5 Div. [ ] STOCK.
Coupon for Shillings and Pence, (Less Income Tax) being Three Months' Dividend at £ Per Cent. per Annum. A 00000 Due [1*st January*, 1892] on Certificate for FIFTY POUNDS. [ ] STOCK.	*Due* [1*st Jan.* 1892]. A 00000
£0 0 0 *Payable at* .	£0 0 0
4 Div. [ ] STOCK.	4 Div. [ ] STOCK.
Coupon for Shillings and Pence, (Less Income Tax) being Three Months' Dividend at £ Per Cent. per Annum. A 00000 Due [1*st October*, 1891] on Certificate for FIFTY POUNDS. [ ] STOCK.	*Due* [1*st Oct.* 1891]. A 00000
£0 0 0 *Payable at* .	£0 0
3 Div. [ ] STOCK.	3 Div. [ ] STOCK.
Coupon for Shillings and Pence, (Less Income Tax) being Three Months' Dividend at £ Per Cent. per Annum. A 00000 Due [1*st July*, 1891] on Certificate for FIFTY POUNDS. [ ] STOCK.	*Due* [1*st July*, 1891]. A 00000
£0 0 0 *Payable at* .	£0 0 0
2 Div. [ ] STOCK.	2 Div. [ ] STOCK.
Coupon for Shillings and Pence, (Less Income Tax) being Three Months' Dividend at £ Per Cent. per Annum. A 00000 Due [1*st April*, 1891] on Certificate for FIFTY POUNDS. [ ] STOCK.	*Due* [1*st April*, 1891]. A 00000
£0 0 0 *Payable at* .	£0 0 0

FEES.

	£	*s.*	*d.*
On original issue of stock receipt or stock certificate - -	0	2	6
On any new stock certificate - - - - - - - -	0	2	6
On transfer including certificate - - - - - -	0	5	0
On any issue of stock certificate to bearer in respect of every *ten* pounds of stock specified therein - - - - -	0	0	6
On re-entry in stock register of stock specified in stock certificate to bearer - - - - - - - - - - -	0	5	0

SCHEDULE B.

Abstract of Stock and Redemption Fund Accounts, made in pursuance of Article 38 of the Regulations of the Local Government Board issued under Section 70 of the Local Government Act, 1888.

1. Name of County Council. 2. Name of Stock. 3. Period for which Abstract is made, viz., Year ended .
4. Rate of Interest on Stock. 5. Average Price of Issue of Stock.

BORROWING POWERS.

Purpose in respect of which borrowing power is exercised	Act of Parliament, Provisional Order, or Sanction authorising borrowing.	Amount of borrowing power.	Amount of borrowing power authorised to be exercised by the issue of Stock.	Amount of borrowing power exercised by the issue of Stock up to commencement of Year.	Amount of borrowing power exercised by the issue of Stock up end of Year.	Total borrowing power exercised by the issue of Stock and otherwise up to end of Year.	Period within which Loan is repayable.	Date when first annual payment to Redemption Fund Account became due.	Rate of Interest prescribed for accumulation of sums carried to Redemption Fund Account.
6.	7.	8.	9.	10.	11.	12.	13.	14.	15.
1 to 28		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.			

—*Continued.*

STOCK ACCOUNT.

Amount of Stock issued at commencement of Year, and in respect of which a sum has annually to be carried to Redemption Fund Account.	Amount of Stock issued during Year.	Amount of Stock extinguished up to commencement of Year.	Amount of Stock extinguished during Year.	Amount of Stock unextinguished at end of Year.
16.	17.	18.	19.	20.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d. 1 to 28

—*Continued.*

REDEMPTION FUND

Amount, if any, received and carried to Redemption Fund Account during Year from sales of Surplus Land, etc.	Amount having formed part of any Sinking Fund, and carried to Redemption Fund Account during Year.	Amount carried to Redemption Fund Account during the Year as interest on investments.	Amount carried to Redemption Fund Account during the year as interest on part of the sums carried to that Account applied in extinction of Stock.	Amount carried to Redemption Fund Account during the Year and not included in previous Columns.	Fund from which payments in last preceding Column were made.
21.	22.	23.	24.	25.	26.
1 to 28 £ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	

—*Continued.*

ACCOUNT.

Total carried to Redemption Fund Account from all sources during Year.	Amount standing to credit of Redemption Fund Account at commencement of Year.	Amount paid for extinction of Stock during Year.	Amount standing to credit of Redemption Fund Account at end of Year.		
			Uninvested.	Invested.	Description of Securities in which invested.
27.	28.	29.	30.	31.	32.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	1 to 28

Given under the Seal of Office of the Local Government Board, this Third day of July, in the year One thousand eight hundred and ninety-one.

(L.S.) HUGH OWEN, *Secretary.*

CHAS. T. RITCHIE, *President.*

Order in Council under section 70 *of the Local Government Act*, 1888, ante, p. 135, *amending the Order last set out.*

At the Court at Osborne House, Isle of Wight, the 3rd day of August, 1897.

Present, the Queen's Most Excellent Majesty in Council.

Whereas the Local Government Board did, in pursuance of the powers conferred upon them by the Local Government Act, 1888, on the 12th day of June 1897, make certain regulations amending the regulations confirmed by Order in Council of 26th September, 1891, applicable to the creation, issue, transfer, and redemption of and other dealings with any County Stock which any County Council create under the Local Government Act, 1888, in exercise of any statutory borrowing power:

And whereas the said amending Regulations have, as required by the said Act, been laid before both Houses of Parliament for a period of 30 days, and no resolution has been passed by either House that such amending Regulations ought not to be proceeded with.

Now, therefore, Her Majesty having taken the said amending regulations (copy whereof is hereunto annexed) into consideration, is pleased, by and with the advice of Her Privy Council, to confirm, and doth hereby confirm the same. C. L. PEEL.

AMENDING REGULATIONS referred to in the foregoing Order.

THE LOCAL GOVERNMENT ACT, 1888.

REGULATIONS AS TO ISSUE OF COUNTY STOCK: AMENDING ORDER.

To the COUNTY COUNCILS of the several Administrative Counties in ENGLAND and WALES, other than the County Council of London:— And to all others whom it may concern.

Whereas by sub-section (8) of Section 69 of the Local Government Act, 1888, it is enacted that where the County Council are authorised to borrow any money on loan they may raise such money by stock issued under the said Act, or by the other methods mentioned in the said sub-section;

And whereas by Section 70 of the said Act it is enacted as follows:

"70.—(1.) County stock may be created, issued, transferred, dealt with, and redeemed in such manner, and in accordance with such regulations as the Local Government Board may from time to time prescribe.

"(2.) Without prejudice to the generality of the above power, such regulations may provide for the discharge of any loan raised by such stock, and in the case of consolidation of debt for extending or varying the times within which loans may be discharged, and may provide for the consent of limited owners and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section, with or without modifica-

tions, any enactments of the Local Loans Act, 1875, and the Acts amending the same, and of any Act relating to stock issued by the Metropolitan Board of Works, or by the corporation of any municipal borough.

"(3.) Such regulations shall be laid before each House of Parliament for not less than thirty days during which such House sits, and if either House during such thirty days resolves that such regulations ought not to be proceeded with the same shall be of no effect, without prejudice nevertheless to the making of further regulations.

"(4.) If no such resolution is passed, it shall be lawful for Her Majesty by Order in Council to confirm such regulations, and the same when so confirmed shall be deemed to have been duly made and to be within the powers of this Act, and shall be of the same force as if they were enacted in this Act."

And whereas the Local Government Board by Order dated the 3rd day of July, 1891, made Regulations under the said Section (hereinafter called "the Regulations"), and the same were confirmed by Order in Council dated the 26th day of September, 1891;

And whereas it is desirable that the Regulations should be amended as herein-after provided:

Now therefore, We, the Local Government Board, in pursuance of the powers given to Us by the last above-cited Section, do hereby Order and Prescribe as follows:—

From and after the confirmation of these Regulations by Order in Council, the Regulations shall be amended by the additions and alterations herein-after contained, and as so amended shall apply to the creation, issue, transfer, and redemption of, and other dealings with, any stock which any County Council create under the Local Government Act, 1888, in exercise of any statutory borrowing power as defined in Article 1 of the Regulations:

Provided that the said additions and alterations shall not apply to any stock issued before the confirmation of these Regulations, except as herein-after expressly mentioned, or as We may hereafter direct.

Article 1.—(1.) A County Council who shall have issued stock under the Regulations, whether of one or more classes, and whether before or after the date of this Order, may, if the Board by Order so provide, from time to time, create and issue stock, under and subject to the Regulations as hereby amended, of another class than any stock previously created by the County Council, and so that some or all of the terms and conditions on which the same is issued, including the rate of dividend payable thereon and the period after which the same shall become redeemable, may not be the same as those of any stock previously created, but any such stock shall rank equally with the stock previously issued, and (unless otherwise expressed in the resolution for the creation of the stock) with all other securities of the County Council created or granted in pursuance of any statutory borrowing power at any time after the date of the first creation of any stock.

(2.) A separate Stock (Dividends) Fund Account of the County Fund and a separate Stock (Redemption) Fund Account of the County Fund shall be kept for every class of stock; the accounts for each class of stock being distinguished by number or otherwise.

(3.) In this Order the term "Dividends Fund Account" and "Redemption Fund Account" shall mean as well the Stock (Dividends) Fund Account, and Stock (Redemption) Fund Account under the Regulations, as the Stock (Dividends) Fund Account and the Stock (Redemption) Fund Account for any class of stock created and issued by a County Council under the provisions of this Article.

ARTICLE 2.—In any consolidation scheme, under Article 5 of the Regulations, loans previously raised by stock and loans included in any previous consolidation scheme, whether before or after this Order, may be included.

ARTICLE 3.—(1.) If money to be raised by the issue of stock is to be lent by the County Council, and to be repaid by instalments, or if in any other case the Board think fit, the Board may determine that the amounts of the several contributions to the Redemption Fund Account in respect of such stock (subject to any reduction thereof authorised under the Regulations) shall be determined by the provisions either of paragraph (a), paragraph (b), or paragraph (c) of this clause :—

(a.) The said amounts shall be the same as would, under the statutory borrowing power, have been payable towards paying off the money represented by the stock, or to a non-accumulating sinking fund for the repayment of the same, if the same had been raised otherwise than by the issue of stock.

(b.) The said amounts shall be such equal annual amounts as will be sufficient, after payment of all expenses, to purchase the amount of stock at par within the time within which, under the statutory borrowing power or Order of the Board under the Regulations as hereby amended, the money represented by the stock is to be repaid.

(c.) If the statutory borrowing power in exercise of which the stock is issued does not determine the amounts to be paid towards paying off or to a non-accumulating sinking fund in respect of the money to be borrowed thereunder, or the period within which the same is to be repaid, or if the Board approve a scheme for the consolidation of all or any of the loans raised or to be raised by the issue of stock, the amounts of the several contributions shall be such equal annual amounts as will be sufficient, after payment of all expenses, to purchase the amount of stock at par within such time, not exceeding forty years from the first creation of the stock, as the Board shall determine.

(2.) Except as herein-after provided, the provisions of clause (1) of Article 11 of the Regulations, and so much of clause (4) of that Article as requires interest to be paid into the Redemption Fund

Account or any part of the money carried to that Account and applied in the redemption or purchase and extinction of such stock, and so much of Article 12 of the Regulations as requires the interest and annual proceeds arising from the investment of the sums standing to the credit of the Redemption Fund Account to be invested and accumulated shall not apply to contributions made to the Redemption Fund Account under this Article; provided that (without prejudice to the power reserved to the Board under clause (2) of Article 11 of the Regulations), if the Board shall at any time be of opinion that the contributions made to the Redemption Fund Account under this Article will not, in consequence of the depreciation of the securities in which the same are invested, be sufficient to redeem or purchase the amount of stock in respect of which such contributions are made as required by the Regulations as hereby amended, they may direct that the above-mentioned provisions of clause (4) of Article 11 and of Article 12 shall apply with such modifications as they may prescribe. Provided also, that so long as the above-mentioned provisions of Article 12 shall not apply, the interest and annual proceeds arising from the investment of contributions made to the Redemption Fund Account under this Article may be paid into the Dividends Fund Account, in reduction of the amount to be provided by contributions as required by Article 6 of the Regulations.

Article 4.—(1.) If the County Council create and issue stock for the purpose of raising any money to be paid under clause (2) of Article 14 of the Regulations, to the holder of any security for his consent to or for otherwise compensating him for the payment off or redemption of his security, or to the substitution of stock for his security, the period within which provision shall be made for the redemption of the amount of stock created and issued for that purpose shall be such period as the Board may determine, not exceeding the period within which the money representing the security paid off or redeemed or for which the stock is substituted is required to be paid off under the statutory borrowing power or under any Order of the Board prescribing the time within which such money is to be paid off or redeemed.

(2.) The amount of any payment under clause (2) of Article 14 of the Regulations which may be raised by the issue of stock shall not exceed the amount which the Board may by Order authorise to be so raised.

Article 5.—The following provisions shall be substituted for the last paragraph of Article 11 of the Regulations, and shall apply to stock issued before or after this Order :—

"When the County Council redeem or purchase and extinguish stock by the application of any part of the money carried to the Redemption Fund Account, the stock so redeemed or purchased and extinguished shall be deemed to be stock issued in respect of such one or more of the statutory borrowing powers

exercised by the issue of stock and, if in respect of more than one, in such proportions as the County Council shall before or within three months after the redemption or purchase direct, or in default of such direction, as the Local Government Board shall determine: Provided that no larger amount of stock shall be deemed to be redeemed or purchased and extinguished in respect of any statutory borrowing power than the amount which, according to the actual price of redemption or purchase, could be redeemed or purchased with the contributions paid into the Redemption Fund Account in respect of that borrowing power and the accumulations (if any) thereon."

ARTICLE 6.—The words "the statutory borrowing power which the County Council could exercise for such other purpose" shall be substituted in Article 16 of the Regulations for the words "such last-mentioned statutory borrowing power." This amendment shall apply to stock issued before or after this Order.

ARTICLE 7.—The following shall be substituted for clause (5) of Article 23 of the Regulations:—

The Registrar shall, after reasonable notice, and on delivery up of the old stock certificate, or on such proof that it cannot be produced, as the Registrar, with the approval of the County Council, may require, deliver to the purchaser a new stock certificate under the seal of the County Council.

ARTICLE 8.—Clause (1) of Article 51 of the Regulations shall be amended by the substitution for the words "including any sum paid by them for composition for stamp duty thereon and any other expenses," of the words "so far as they are."

ARTICLE 9.—These Regulations shall be read as one with the Regulations, and may be cited as "The County Stock Regulations (Amendment), 1897," and with the Regulations as "The County Stock Regulations, 1891 and 1897," and the Regulations may be cited as "The County Stock Regulations, 1891."

Given under the Seal of Office of the Local Government Board, this twelfth day of June, in the year One thousand eight hundred and ninety-seven.

HENRY CHAPLIN,
President.

(L.S.)

HUGH OWEN,
Secretary.

LAND, COMPULSORY HIRING AND PURCHASE OF.

PARISH COUNCILS.

Compulsory Hiring of Land for Allotments (*a*).

Regulations and Adaptations under Section 10 *of the Local Government Act*, 1894.

(General Order, May 20th, 1895.)

To the County Council of every Administrative County in England and Wales, except the Administrative County of London;—
To each Parish Council in England and Wales;—
And to all others whom it may concern.

Whereas by section 9 of the Local Government Act, 1894, it is enacted that—

"9.—(1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

"(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

"(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that suitable land for the said purpose of the parish council, or for the purpose of allotments (as the case may be), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

"(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts

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(*a*) As to compulsory *purchase* of land by parish councils (and by district councils for allotments), see the Order of May 22nd, 1895, *post*, p. 821; and in connection with the present Order, see the Order of May 21st, 1895, containing adaptations of the Lands Clauses Acts, *post*, p. 805.

with respect to the purchase and taking of land otherwise than by agreement.

"(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

"(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

"(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the prescribed period—

"(a.) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order:

"(b.) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order:

"(c.) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

* * * * *

"(13.) Subsection (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, subsections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly.

* * * * *

And whereas by sub-section (1) of section 10 of the said Act it is enacted that—

"10.—(1.) The parish council shall have power to hire land for allotments, and if they are satisfied that allotments are required,

and are unable to hire by agreement on reasonable terms suitable land for allotments, they shall represent the case to the county council, and the county council may make an order authorising the parish council to hire compulsorily for allotments, for a period not less than fourteen years nor more than thirty-five years, such land in or near the parish as is specified in the order, and the order shall, as respects confirmation and otherwise, be subject to the like provisions as if it were an order of the county council made under the last preceding section of this Act, and that section shall apply as if it were herein re-enacted with the substitution of 'hiring' for 'purchase' and with the other necessary modifications."

And whereas by section 75 of the said Act it is enacted, that, in that Act, unless the context otherwise requires, the expression "prescribed" means prescribed by order of the Local Government Board:

Now therefore, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, do, by this Our Order, and until We shall otherwise Direct, Prescribe as follows; that is to say,—

Article I.—In every case in which a County Council on a representation by a Parish Council under sub-section (1) of section ten of the Local Government Act, 1894, propose to proceed under that enactment, and with a view to such proceeding, to cause public Inquiry to be made, the County Council shall, not less than six weeks before the day on which it is proposed that the Inquiry shall be held, cause notice to be given in such form and in such manner as are herein-after prescribed:—

I. The notice shall specify the particulars of the representation, and shall state that the County Council propose to cause public Inquiry to be made.

II. The notice shall further specify, as regards any land proposed to be compulsorily hired, the quantity and description and the situation of the land proposed to be compulsorily hired, the period for which it is proposed that the land shall be compulsorily hired, and the names of the owners, lessees, and occupiers of the said land.

III. A printed copy of the notice shall be sent by post by the County Council to each owner, lessee, and occupier of the land proposed to be compulsorily hired, or, if such owner, lessee, or occupier is absent abroad, to his agent.

Article II.—The County Council, not more than one calendar month and not less than two weeks before the holding of the public Inquiry, shall cause a notice to the like effect as that of the notice prescribed by Article I., and containing also a statement of the day, time, and place appointed for the holding of the Inquiry, and of the person or persons by whom the Inquiry is to be held, to be published

and given in accordance with the following requirements; that is to say,—

I. The notice shall be published in the Parish, by posting a printed copy of the notice as a bill or placard in every such place in the Parish as is ordinarily used for posting public or parochial notices.

II. A printed copy of the notice shall be sent by post by the County Council—

To the Parish Council; and

To each owner, lessee, and occupier of the land proposed to be compulsorily hired, or, if such owner, lessee, or occupier is absent abroad, to his agent.

Article III.—The County Council shall, within ten days after the making of the order (*b*), cause a copy of any order made by them under section ten of the Local Government Act, 1894, to be served by post in accordance with the following requirements; that is to say,—

A copy of the said Order shall be sent by post to the Parish Council, and to each owner, lessee, and occupier of the land proposed to be compulsorily hired, or, if such owner, lessee, or occupier is absent abroad, to his agent.

Article IV.—Every copy of a notice or order which, in pursuance of any provision in Articles I., II., and III. is required to be sent or served by post to or upon any Parish Council or person therein mentioned shall be so sent or served by a registered letter containing such copy, and properly addressed, prepaid, and posted to such Council, or to such person at his usual or last known place of abode.

Article V.—The period within which a memorial by a person interested praying that an Order made under section ten of the Local Government Act, 1894, shall not become law without further inquiry may be presented to the Local Government Board shall be the period of one calendar month after the making of the said Order.

Article VI.—For the purposes of section ten of the said Local Government Act, 1894, the several provisions herein-before mentioned of the Allotments Acts, 1887 and 1890, shall be adapted in the form and manner set forth in the Schedule to this Order.

SCHEDULE.

The Allotments Act, 1887.

Section 2 (2).

(2.) A Parish Council shall not, under section ten of the Local Government Act, 1894, or in pursuance of an Order made under the said section, acquire land for allotments, save at such price or rent that, in the opinion of the said Council, all expenses, except such expenses

(*b*) As to the adapted provisions of the Lands Clauses Acts which the order may contain, see the Order of the Local Government Board of May 21, 1895, *post*, p. 805.

as are incurred in making roads to be used by the public, incurred by the said Council in acquiring the land and otherwise in relation to the allotments may reasonably be expected to be recouped out of the rents obtained in respect thereof.

Section 3 (5), (6), (7), *and* (8).

(5.) In construing for the purposes of section ten of the Local Government Act, 1894, so far as the said section empowers a Parish Council to hire land by agreement for allotments, and for that purpose provides that section nine of the Local Government Act, 1894, shall apply as if it were therein re-enacted, with certain modifications, the provisions of the Lands Clauses Acts as incorporated, and of section one hundred and seventy-eight of the Public Health Act, 1875, as applied by sub-section (1) of section nine of the Local Government Act, 1894, the last-mentioned Act shall be deemed to be the Special Act, and the Parish Council shall be deemed to be the Local Authority or the promoters of the Undertaking, as the case requires, and the word "land" shall have the same meaning as in the Allotments Act, 1887.

(6.) Where land is hired compulsorily by a Parish Council under an Order in pursuance of section ten of the Local Government Act, 1894, the following provisions shall apply:—

(*a.*) The County Council and the Local Government Board shall not make an Order for the compulsory hiring of any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway or canal company, which is or may be required for the purposes of their undertaking.

(*b.*) The County Council and the Local Government Board shall, in making an Order for the compulsory hiring of land, have regard to the extent of land held in the neighbourhood by any owner and to the convenience of other property belonging to the same owner, and shall, so far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner.

(7.) For the purpose of the hiring of land by a Parish Council for allotments in pursuance of section ten of the Local Government Act, 1894, any person or body of persons or body corporate authorised to sell land to the Sanitary Authority for the purposes of the Allotments Act, 1887, may, without prejudice to any other power of leasing, lease land to the Parish Council, without any fine or premium, for a term not exceeding thirty-five years.

(8.) The County Council and the Local Government Board shall not make an Order in pursuance of section ten of the Local Government Act, 1894, for the compulsory hiring of any right to coal or metalliferous ore.

Section 11.

(1.) Where a Parish Council are of opinion that any land, or any part of any land, hired by the said Council by agreement, in pursuance

of section ten of the Local Government Act, 1894, for the purpose of allotments is no longer needed for such purpose, the said Council may, with the sanction of the County Council, and subject to the terms and conditions of the hiring of such land or part and to the provisions of sub-section (2) of section eight of the Local Government Act, 1894, let such land or part.

(2.) Any money received from the letting of the land may, subject to the provisions of section eight of the Local Government Act, 1894, be applied in aid of the expenses of the Parish Council under the Local Government Act, 1894.

THE ALLOTMENTS ACT, 1890.

Section 3 (2), (3), *and* (4).

(2.) For the purpose of any business under section ten of the Local Government Act, 1894, relating to any parish wholly or partly situate in an electoral division, the County Councillor representing that division shall, if not already appointed, be an additional member of the Standing Committee appointed for the purposes of the Allotments Acts, 1887 and 1890.

(3.) Any representation by a parish council under sub-section (1) of section ten of the Local Government Act, 1894, shall, as of course, and without any Order of the County Council, be referred to the said Standing Committee, who shall forthwith inquire into the circumstances, and shall report the result to the County Council.

(4.) Where the County Council are satisfied that the circumstances are such as to justify them in proceeding under section ten of the Local Government Act, 1894, the public inquiry which, by sub-section (3) of section nine as applied by sub-section (1) of section ten of the said Act, is required to be made shall be held by such one or more members of the said Standing Committee, or such officer of the County Council as the said Standing Committee may appoint to hold the same.

Given under the Seal of Office of the Local Government Board, this Twentieth day of May, in the year One thousand eight hundred and ninety-five.

(L.S.) G. SHAW-LEFEVRE,
President.

WALTER FOSTER,
Secretary.

The following Memorandum was issued with the foregoing Order :—

By section 10 (1) of the Local Government Act, 1894, it is enacted that the Parish Council shall have power to hire land for allotments, and if they are satisfied that allotments are required and are unable to hire by agreement on reasonable terms suitable land for allotments,

they shall represent the case to the County Council, and the County Council may make an Order authorising the Parish Council to hire compulsorily for allotments for a period not less than 14 years nor more than 35 years, such land in or near the Parish as is specified in the Order.

The Order, as respects confirmation and otherwise, is subject to the like provisions as if it were an Order of the County Council made under section 9 of the Local Government Act, 1894, and that section will apply as if it were re-enacted in sub-section 1 of section 10, with the substitution of "hiring" for "purchase," and with the other necessary modifications.

Section 9, which is thus applied, specifies various matters which must be prescribed by the Local Government Board. Regulations as to such of these matters as are appropriate to the case in which a Parish Council seek power to hire land compulsorily for allotments will be found in the accompanying Order. The Order also prescribes certain adaptations of sub-section (2) of section 2, of sub-sections (5), (6), (7), and (8) of section 3, and of section 11 of the Allotments Act, 1887, and also of section 3 of the Allotments Act, 1890.

A brief explanation of some points arising in connexion with the procedure under section 10 of the Local Government Act, 1894, is appended.

As regards the hiring of land by agreement, the Parish Council will not require the aid of any intermediary authority. The Parish Council in such circumstances are brought into direct relations with the landowner.

As to hiring by agreement, the Parish Council may wish to negotiate for the acquisition of land held by persons entitled as tenants for life, or otherwise as limited owners, or subject to any disability or incapacity which would not attach to an absolute owner in fee simple, and provision has been made for meeting these cases by an enlargement of the powers of owners in this respect. The prescribed adaptation of section 3 (7) of the Allotments Act, 1887, provides that for the purpose of the hiring of land by a Parish Council for allotments in pursuance of section 10 of the Local Government Act, 1894, any person or body of persons or body corporate authorised to sell land to the Sanitary Authority for the purposes of the Allotments Act, 1887, may, without prejudice to any other power of leasing, lease land to the Parish Council without any fine or premium for a term not exceeding 35 years.

The effect of this adaptation is that the persons enabled to sell land by virtue of the Lands Clauses Acts as incorporated with section 3 (1) of the Allotments Act, 1887, are empowered to lease, and their powers, where these under the general law would be more restricted, are enlarged so as to give them authority to grant a lease for a term not exceeding 35 years.

But if the Parish Council are unable to hire by agreement on reasonable terms suitable land for allotments, it will be requisite for the Council, if they desire to carry the matter further, to invoke the aid of the County Council.

To bring the matter before the County Council a representation by the Parish Council will be necessary.

This representation should state fully the circumstances on which the Parish Council rely to show that they are unable to hire suitable land by agreement on reasonable terms. The representation, in pursuance of the prescribed adaptation of section 3 (3) of the Allotments Act, 1890, will, as of course, and without any order of the County Council, be referred to the Standing Committee of the County Council appointed under the last-mentioned Act. It will be incumbent upon the Standing Committee to inquire forthwith into the representation, and to report the result to the County Council.

Upon this inquiry and report the County Council will be in a position to form an opinion as to whether any further action by them will be requisite or expedient.

If the County Council are satisfied that suitable land for allotments cannot be hired by the Parish Council by agreement on reasonable terms, and that the circumstances are such as to justify the County Council in proceeding under section 10 with a view to the making of an order authorising the Parish Council to hire land compulsorily, it will then be the duty of the County Council in the subsequent steps of their procedure to follow the regulations prescribed by the Order of the Board.

Local Government Board,
May 1895.

Compulsory Hiring of Land for Allotments: Adaptations of Lands Clauses Acts.

(General Order, May 21st, 1895.)

To the County Council of every Administrative County in England and Wales, except the Administrative County of London;—
And to all others whom it may concern.

Whereas by sub-sections (1) and (8) of section 10 of the Local Government Act, 1894, it is enacted that—

> "10.—(1.) The parish council shall have power to hire land for allotments, and if they are satisfied that allotments are required, and are unable to hire by agreement on reasonable terms suitable land for allotments, they shall represent the case to the county council, and the county council may make an order authorising the parish council to hire compulsorily for allotments, for a period not less than fourteen years nor more than thirty-five years, such land in or near the parish as is specified in the order, and the order shall, as respects confirmation and otherwise, be subject to the like provisions as if it were an order of the county council made under the last preceding section of this Act, and that

section shall apply as if it were herein re-enacted with the substitution of 'hiring' for 'purchase' and with the other necessary modifications."

"(8.) The order for compulsory hiring may apply, with the prescribed adaptations, such of the provisions of the Lands Clauses Acts (including those relating to the acquisition of land otherwise than by agreement) as appear to the county council or Local Government Board sufficient for carrying into effect the order, and for the protection of the persons interested in the land and of the parish council."

And whereas by section 75 of the said Act, it is enacted that, in that Act, unless the context otherwise requires, the expression "prescribed" means prescribed by order of the Local Government Board:

Now, therefore, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, Do hereby prescribe as follows; that is to say,—

For the purposes of any Order to be made under section ten of the Local Government Act, 1894, for authorising a Parish Council to hire compulsorily for allotments for a period not less than fourteen years nor more than thirty-five years such land as is specified in the Order, the provisions of the Lands Clauses Act shall be adapted so that the provisions of the Lands Clauses Acts which any such order may apply shall be the provisions of those Acts in the form and with the adaptations contained in the paragraphs numbered one to thirty-five, both inclusive, of the Schedule to this Order, and in the words in the said schedule set forth by way of introduction to and description of the subject-matter of the said paragraphs.

SCHEDULE.

I.

With respect to the Construction of the adapted Provisions.

1. (*II.-III.*) (*a*). The expression "the adapted provisions" means the Lands Clauses Consolidation Act, 1845, as applied, with the prescribed adaptations, in pursuance of section ten of the Local Government Act, 1894; the expression "the Lands Clauses Consolidation Act, 1845," used in the adapted provisions, means the Lands Clauses Consolidation Act, 1845, as applicable to the purchase or taking of lands for any such undertaking as is mentioned in section one of the said Act; the expression "the Order," used in the adapted provisions, means any Order made under sub-section (1) of section ten of the Local Government Act, 1894, which authorises the compulsory hiring of land by a Parish Council; the expression "the Commencement of the Order" means the date at which any such Order becomes final in

(*a*) The roman figures refer to the sections of the Lands Clauses Consolidation Act, 1845.

pursuance of sections nine and ten of the Local Government Act, 1894; the expression "the Undertaking" means the purpose for which by the Order the compulsory hiring of lands by a Parish Council is authorised; the expression "the Parish Council" means the Parish Council by the Order empowered to hire lands compulsorily for the Undertaking; the expression "Lands" has the meaning assigned to the expression "Land" when used in section three of the Allotments Act, 1887, as incorporated and applied by sections nine and ten of the Local Government Act, 1894; the expression "Paymaster General" means Her Majesty's Paymaster General for the time being for and on behalf of the Supreme Court, or the Assistant Paymaster General for Supreme Court business for the time being deputed by the Paymaster General to act on his behalf for such business; the expression "County" has the same meaning as in the Local Government Act, 1894, except that it does not include a County Borough; the expression "Owner" means the person or persons or corporation who, whether under the adapted provisions, or otherwise by reason of his or their estate or interest in the lands, or of the powers of leasing exerciseable by him or them in respect of the lands comprised in the Order, is or are enabled to lease the same for the Undertaking to the Parish Council for the term for which the Parish Council are by the Order authorised to hire the same compulsorily; the expression "Compensation" means any sum of money payable by the Parish Council in respect of the hiring of any lands by the Order authorised to be compulsorily hired, and not being rent or other payment to become due under the lease in respect of the said land; and the expression "the Bank" means the Bank of England.

Unless the contrary intention appears, all words and expressions used in the adapted provisions, and not herein-before specifically defined, shall have the meanings respectively assigned to them by and shall be construed in accordance with the provisions of the Interpretation Act, 1889, and the rules of construction in the Interpretation Act, 1889, contained shall apply to the adapted provisions as if the said provisions were an Act passed after the commencement of the Interpretation Act, 1889.

2. (*V.*) For the purposes of section ten of the Local Government Act, 1894, the incorporation with the Order of the adapted provisions shall be effected by the statement in the Order that the adapted provisions shall be incorporated therewith; and thereupon all the adapted provisions shall form part of the Order, and the Order shall be construed as if the adapted provisions were set forth therein with reference to the matter to which it relates.

II.

As to the Hiring of Lands by Agreement.

3. (*VI.*) Subject to the adapted provisions, the Parish Council may agree with the owner of any lands, by the Order authorised to be

compulsorily hired, for the hiring of any such lands or of such parts thereof as the Parish Council think proper.

4. (*VII.*) All parties seised, possessed of, or entitled to any lands by the order authorised to be compulsorily hired, or of or to any estate or interest therein, may lease or (according to their estate or interest therein) may join in leasing the same to the Parish Council; and all corporations, tenants in tail or for life, married women, tenants by the curtesy or in dower, guardians, committees of lunatics or idiots, trustees, or feoffees in trust for charitable or other purposes, executors and administrators, entitled to the receipt of the rents and profits of any lands by the Order authorised to be compulsorily hired, may lease such lands for the Undertaking to the Parish Council for the term mentioned in the Order, and may exercise this power not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them or in defeasance of the estates of such persons, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics or idiots of whom they are the committees, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of the adapted provisions if they had respectively been under no disability, or as if any disability to which any such parties may be subject did not extend to the power to lease such lands for the undertaking to the parish council for the term mentioned in the Order, and as to such trustees, executors, and administrators on behalf of their *cestui que trusts*, whether infants, issue unborn, lunatics, femes coverts, or other persons, and that to the same extent as such *cestui que trusts* respectively could have exercised the same powers under the adapted provisions if they had respectively been under no disability, or as if any disability to which any such parties may be subject did not extend to the power to lease such lands for the Undertaking to the Parish Council for the term mentioned in the Order.

5. (*X.*) The Owner of any lands by the Order authorised to be compulsorily hired, if he is entitled, otherwise than under the adapted provisions, to lease the same for the term mentioned in the Order, may agree with the Parish Council as to the terms and conditions of the lease; but if he is not entitled so to lease the same, except under the adapted provisions, the terms and conditions of the lease shall be settled by arbitration; and unless the owner is entitled to dispose of such lands absolutely for his own benefit, the compensation, if any, to be paid for any permanent damage or injury to such lands shall be settled by arbitration.

III.

With respect to the Hiring of lands otherwise than by Agreement.

6. (*XVIII.*) When the Parish Council require to hire compulsorily any lands by the Order authorised to be hired, they shall give notice thereof to the owner of such lands, or to all the parties interested in such lands, or to such of the said parties as shall, after diligent inquiry, be known to the Parish Council, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, in so far as such particulars are required in order to ascertain the owner thereof; and every such notice shall state the particulars of the lands so required, and the term for which the Parish Council are authorised to hire the same, and that the Parish Council are willing to treat for the hiring thereof.

7. (*XIX.*) Every notice required to be given by the Parish Council to the owner or any party shall either be served personally on such owner or party or sent by post to or left at his usual place of abode in the United Kingdom if any such can, after diligent inquiry, be found, and, in case any such owner or party shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall be sent by post to or left with any agent ordinarily receiving the rents of the lands on behalf of the owner or other party entitled thereto, and a copy thereof shall also be sent by post to or left with the occupier of the lands to which such notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

8. (*XX.*) If any such party be a Corporation aggregate such notice shall be sent by post to or left at the principal office of business of such Corporation, or, if no such office can, after diligent inquiry, be found, shall be sent by post to or served on some principal officer, if any, of such Corporation, and such notice shall also be sent by post to or left with the occupier of the lands to which it relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

9. (*XXI.*) If the Parish Council cannot after diligent inquiry ascertain the owner of the lands or the parties interested therein, or if for twenty-one days after the giving, sending, leaving, serving, or affixing of such notice any such owner fail to state the particulars of his interest in respect of any such lands, or to treat with the Parish Council in respect thereof, or if such owner and the Parish Council do not agree as to the terms and conditions of the hiring, or as to any other matter mentioned in sub-section (2) of section ten of the Local Government Act, 1894, any question arising as to any such matter shall be determined in the manner provided by sub-section (4) of section three of the Allotments Act, 1887, as amended by sub-section (2) of section ten of the Local Government Act, 1894.

10. (*XXV.*) Every appointment of an arbitrator appointed by the parties in accordance with the provisions of sub-section (4) of section three of the Allotments Act, 1887, as amended by sub-section (2) of section ten of the Local Government Act, 1894, shall be made in writing on the part of the Parish Council by an instrument executed at a meeting of the Council, and under the hands and seals of the Chairman presiding at the meeting and two other members of the Council, and every such appointment on the part of any other party shall be made in writing under the hand of such party, or, if such party be a Corporation aggregate, under the Common Seal of such Corporation.

Every appointment of an arbitrator appointed by the parties, or appointed, if the parties do not concur in the appointment of the arbitrator, by the Local Government Board, shall be delivered or sent to the arbitrator, and shall be deemed a submission to arbitration on the part of the several parties.

11. (*XXXII.*) The arbitrator may call for the production of any documents in the possession or power of either party which he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths and take the affirmations necessary for that purpose: and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

12. (*XXXIII.*) Before the arbitrator enters into the consideration of any matters referred to him, he shall, in the presence of a Justice, make and subscribe the following declaration; that is to say,—

"*I, A.B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the*
(naming the Order). *A.B.*
Made and subscribed in the presence of . . . . . ."

And such declaration shall be annexed to the award when made: and if any arbitrator having made such declaration wilfully act contrary thereto he shall be guilty of a misdemeanour.

13. (*XXXV.*) The arbitrator shall deliver his award to the Parish Council who shall retain the same and shall forthwith on demand, at their own expense, furnish a copy thereof to the other party to the arbitration and to every other person interested in any question determined by the said award.

14. (*XXXVI.*) The submission to any such arbitration may be made a Rule of the Supreme Court on the application of either of the parties.

15. (*XXXVII.*) No award made with respect to any question to be determined by arbitration in pursuance of the provisions of sub-

section (4) of section three of the Allotments Act, 1887, as amended by sub-section (2) of section ten of the Local Government Act, 1894, and in pursuance of such last-mentioned enactment, shall be set aside for irregularity or error in matter of form.

IV.

With respect to Compensation Coming to Parties seised in Fee, or to Parties having Limited Interests, or prevented from Treating or refusing to accept Tenders, or refusing to Lease.

16. (*LVIII.-LXXII.*) Where, in accordance with an agreement made with the parish council in pursuance of the adapted provisions, or in accordance with an award of an arbitrator appointed as herein-before provided, any compensation becomes payable on the hiring by the Parish Council of any lands by the Order authorised to be compulsorily hired, such compensation shall (except as herein-after provided) be paid to the party to whom the same is payable according to such agreement or award within a period of six weeks after the date of the agreement, or after the receipt by the Parish Council of the award of the arbitrator, or if by reason of the absence of such party from the United Kingdom, or of failure to find him after diligent inquiry, the Parish Council are prevented from paying such compensation to such party, or if such party shall, on such compensation being tendered to him, refuse to receive the same, such compensation shall be deposited as soon as conveniently may be in a Post Office Savings Bank established in any town or other place in which the usual or last known place of abode of such party within the United Kingdom is situate, or in some bank to be approved by the Arbitrator, to the account of such party.

Provided that where such compensation shall be payable in respect of breaking up permanent pasture, or in respect of any other permanent damage or injury to the lands to be hired, and such lands are to be hired from any party not seised in fee or entitled to dispose of the lands absolutely for his own benefit, such compensation shall be deposited by the Parish Council within a period of six weeks after they shall have received the award of the arbitrator in the Bank to the account there of the Paymaster General to the credit of the parties interested in such lands (describing them so far as the Parish Council can do) subject to the control and disposition of the Supreme Court, and with respect to compensation so deposited the provisions of sections seventy-four, seventy-eight, seventy-nine, and eighty of the Lands Clauses Consolidation Act, 1845, shall, subject to the provisions of any Act or Rule of Court for the time being in force for regulating moneys paid into the Supreme Court, apply, as nearly as may be, to such compensation as if it were purchase money or compensation payable in respect of any lands or any interest therein purchased or taken under the said Act by the promoters of the undertaking:

Provided also, that, if such compensation payable in respect of breaking up permanent pasture, or in respect of any other permanent damage or injury to the lands to be hired, do not amount to the sum of two hundred pounds, and exceed the sum of twenty pounds, the same shall either be deposited in the Bank in the manner herein-before directed, and when so deposited shall be subject to the provisions herein-before contained, or made applicable to compensation deposited in the bank, or such compensation may be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands on the hiring whereof the same is payable, such nomination to be signified by writing under the hands of the parties so entitled; and in the case of a married woman entitled otherwise than as if she were a feme sole, or in the case of the infancy, lunacy, or other incapacity of the parties entitled to such compensation, such nomination may be made by the husband of such married woman, or by the guardian, committee, or trustee of such infant, lunatic, or party subject to incapacity as aforesaid, and the compensation so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied as nearly as may be in the same manner as if such compensation or produce were money, or the produce arising from money, paid to such trustees in pursuance of the provisions of section sixty-nine of the Lands Clauses Consolidation Act, 1845, but it shall not be necessary to obtain any Order of the Court for that purpose:

Provided likewise that if such compensation do not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands, on the hiring whereof the same shall be payable, for their own use and benefit, or, in the case of a married woman entitled otherwise than as if she were a feme sole, or in the case of the infancy, lunacy, or other incapacity of any such party, such money shall be paid to the husband of such married woman for her use or to the guardian, committee, or trustee of such infant, lunatic, or party subject to incapacity as aforesaid, for the use of such infant, lunatic, or party.

17. (*LXXV.*) Upon payment or upon deposit in a Post Office Savings Bank, in a bank approved by the arbitrator, or in the Bank (according as the circumstances of the case and the adapted provisions applicable thereto allow or require), of any compensation agreed or awarded to be paid by the Parish Council, the owner of the lands authorised to be compulsorily hired shall, when required so to do by the Parish Council, duly lease such lands to the said Council.

18. (*LXXVII.*) In every case in which, in pursuance of the adapted provisions, the compensation agreed or awarded to be paid on the hiring of any lands by the Order authorised to be compulsorily hired has been deposited in a Post Office Savings Bank, or in a bank approved by the arbitrator, or in the Bank, an officer of such Post Office Savings Bank, or a cashier of such bank approved as aforesaid, or of the Bank shall give to the Parish Council, or to the party depositing such compensation

by their direction, a receipt for such compensation. Such receipt shall be prepared by the Parish Council, shall be submitted by the Parish Council, or by the party depositing such compensation by their direction, to such officer or cashier for his signature, and shall specify to whose account such compensation is deposited, and, if the same is deposited in the Bank to the account there of the Paymaster General, to the credit of what parties (describing them so far as the Parish Council can do) and in respect of the hiring of what lands the same shall have been deposited.

19. (*LXXVI-LXXVII.*) When the Parish Council have, in pursuance of the adapted provisions, paid or deposited all compensation agreed or awarded to be paid on the hiring of any lands by the Order authorised to be compulsorily hired, if the owner of the lands refuses, or, after notice in writing by the Parish Council fails within one calendar month to execute a lease of the lands, so framed and containing such covenants and conditions as may have been agreed upon between him and the Parish Council, or, if the terms and conditions of the hiring have been settled by arbitration, if the owner of the lands cannot after diligent inquiry be ascertained, or fails within a like period after such notice to execute the lease delivered by the arbitrator with the award, the Parish Council shall execute such a lease or the said lease in duplicate, and shall forward one copy thereof to the owner of the lands, if he can be found, and shall thereupon be entitled to enter upon the lands and to hold the same under the lease and subject to the covenants and conditions therein contained, and shall be liable to the payment of the rent and be bound by the covenants as if the lease had been duly executed by all parties.

V.

With respect to Leases of Lands.

20. (*LXXXI.*) Every lease in respect of lands by the Order authorised to be compulsorily hired for the Undertaking, shall be so framed and shall contain such covenants and conditions as will give due effect to such terms and conditions of the hiring, and to such other matters as may have been agreed or awarded in relation to such hiring, and if the terms and conditions have been settled by arbitration the lease shall be settled by the arbitrator, and copies of the same in duplicate, duly stamped, shall be delivered with the award, and shall for the purpose of costs be considered as forming part of the award.

21. (*LXXXII.*) The costs of procuring the execution of the lease by the owner shall be borne by the Parish Council.

22. (*LXXXIII.*) If the Parish Council and the party entitled to any such costs do not agree as to the amount thereof, such costs shall be taxed by one of the Taxing Masters of the Supreme Court, upon an Order of the Court, to be obtained upon petition in a summary way by

either of the parties; and the Parish Council shall pay what the said Master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an Order of the Court, and the expense of taxing such costs shall be borne by the Parish Council unless upon such taxation one-sixth part of the amount of such costs be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said Master, and deducted by him accordingly in his certificate of such taxation.

VI.

With respect to the Entry upon Lands by the Parish Council.

23. (*XCI.*) If in any case in which, according to the adapted provisions, the Parish Council are authorised to enter upon and hold any lands by the Order authorised to be compulsorily hired, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the Parish Council from entering upon or holding the same, a court of summary jurisdiction, on complaint made by the Parish Council, may require the owner or occupier of such lands or other person to deliver possession of the same to the Parish Council or permit them to enter thereon; and any Order made under these provisions may be enforced as provided by section thirty-four of the Summary Jurisdiction Act, 1879.

VII.

With respect to Copyhold Lands.

24. (*XCV.-XCVIII.*) The power herein-before given to lease lands by the Order authorised to be compulsorily hired shall, in the case of lands of copyhold or customary tenure, extend so as to enable any party herein-before authorised to lease lands, to lease such copyhold or customary lands to the Parish Council for such period as may be authorised by the Order, and subject to such terms and conditions of hiring as may be agreed or awarded, notwithstanding that such person shall not have obtained from the Lord of the Manor, of which the said copyhold or customary lands are held or are parcel, such licence (if any) as would be required to empower such person to make such lease; and the Lord of the Manor whereof the said copyhold or customary lands are held or are parcel may, notwithstanding any custom applicable to the said Manor, or any limitation by Statute or otherwise of the estate or interest of the said Lord, grant a licence which shall be effectual to empower any such person as aforesaid to make any such lease as is herein-before authorised.

Provided that where any such lease is made and the party making the same shall not, prior to the making thereof, have obtained such licence as the Lord is herein-before authorised to grant, the Parish Council shall forthwith apply to the Lord to grant such licence; and any such licence granted upon such application shall be as effectual as if such licence had been granted prior to the making of such lease: Provided further, that if upon such application the Lord refuse to grant such licence the Parish Council may, so far as regards the Lord and his estate or interest, proceed with respect to compensation, and otherwise in pursuance of the adapted provisions; and the adapted provisions shall, as nearly as may be, apply to the case as if the case were one of refusal by the owner of lands to lease such lands:

Provided lastly, that every such lease and the particulars of the grant or refusal of such licence shall be entered on the rolls of the Manor; and the Steward of the Manor shall cause such lease and particulars to be so entered, and shall give to the Parish Council a certificate of such entry on payment to such Steward of the accustomed fees, or if there be no accustomed fees, on payment of such sum as may, by a Court of Summary Jurisdiction, on the application of such Steward or the Parish Council, be adjudged to be payable in respect of such entry and certificate.

VIII.

With respect to Lands subject to Mortgage.

25. (*CVIII.-CXIV.*) If any lands by the Order authorised to be compulsorily hired are subject to any mortgage and the Parish Council are authorised and propose to hire such lands for a longer term than that for which the party in possession (whether mortgagor or mortgagee) is enabled to lease the same except under the adapted provisions, the Parish Council may in accordance with the adapted provisions with respect to the giving of notices to the owner of or to parties interested in lands authorised to be compulsorily hired, give notice to the party not in possession (whether mortgagor or mortgagee) requiring him within a time in the notice mentioned, being not less than one calendar month from the giving thereof, to join in making the lease of such lands, and if within the time specified he refuse or neglect so to join the terms and conditions of the hiring and the compensation (if any) to be paid on the hiring of such lands by the Parish Council in respect of any permanent damage or injury to such lands shall be settled by arbitration in manner provided by sub-section (4) of section three of the Allotments Act, 1887, as amended by sub-section (2) of section ten of the Local Government Act, 1894, and the lease when executed by the mortgagor or mortgagee in possession, or, in the event of his refusal or failure to execute the same, when executed by the Parish Council in pursuance of the adapted provisions in that behalf, shall be valid as against the mortgagee or mortgagor not in possession.

26. (*CVIII.-CXIV.*) In every case where the Parish Council under a lease made in pursuance of the adapted provisions hold lands subject

to a mortgage made before the date of the Order authorising the compulsory hiring of such lands, and the lease is not valid as against the mortgagee, the Parish Council shall for themselves and for every tenant of an allotment upon the said lands be entitled, as against any mortgagee who takes possession, to the compensation to which an occupier of land would be entitled under section two of the Tenants Compensation Act, 1890; and that enactment and the enactments therein referred to shall be construed as applicable to the circumstances of the case, as if the contract of tenancy therein mentioned were for a term of years not exceeding the period for which the said lands may have been authorised to be compulsorily hired.

IX.

With respect to Lands subject to Leases or Contracts of Tenancy.

27. (*CXIX.*) If any lands be comprised in a lease or contract of tenancy for an unexpired term and part only of such lands be by the Order authorised to be compulsorily hired for the undertaking, the owner by the adapted provisions or otherwise empowered to lease such part to the Parish Council, and his lessee or tenant, shall have power to agree as to the apportionment of the rent payable under such lease or contract of tenancy between the lands to be hired by the Parish Council and the residue of the lands comprised in such lease or contract of tenancy.

Every such agreement may contain the necessary stipulations and conditions with respect to any matter which in relation to such apportionment may be made the subject of determination by an award of an arbitrator appointed under sub-section (4) of section three of the Allotments Act, 1887, as amended by sub-section (2) of section ten of the Local Government Act, 1894.

After such apportionment has been settled as aforesaid, the lessee or tenant shall as to all future accruing rent be liable only to so much of the rent as shall be so apportioned in respect of that part of the lands which is not hired by the Parish Council; and as to such part, and as against his lessee or tenant, the owner shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by the lease or contract of tenancy, and all the covenants, conditions, and agreements of such lease or contract of tenancy, except as to the amount of rent to be paid and as to any other matter as to which any stipulation or condition is contained in the agreement as to such apportionment, shall remain in force with regard to that part of the lands which is not hired by the Parish Council in the same manner as if such part only of the said lands had been included in the lease or contract of tenancy.

If the owner and his lessee or tenant fail to agree as to the apportionment of the rent payable as aforesaid, or as to any other matter which might be settled by such agreement, the matter or matters in dispute shall be settled by arbitration in manner provided by sub-section (4) of section three of the Allotments Act, 1887, as amended by sub-section (2) of section ten of the Local Government Act, 1894. If any arbitrator be appointed to settle the terms and conditions of the hiring by the Parish Council, or the compensation (if any) to be paid by them, he shall also act as arbitrator for the purpose of this provision, and the lessee or tenant shall be one of the parties to agree to his appointment; but if no such arbitrator be appointed, the arbitrator for the purposes of this provision shall be appointed by the owner and the lessee, or, if they do not concur, by the Local Government Board, in accordance with the provisions of sub-section (4) of section three of the Allotments Act, 1887, and the costs of the arbitration shall be paid by the Parish Council unless the County Council shall otherwise direct.

28. (*CXXI.*) If any lands comprised in a lease or contract of tenancy for an unexpired term, and by the Order authorised to be compulsorily hired by the Parish Council, be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and if such person be required to give up possession of all such lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury which such person may sustain.

Upon payment or tender of such compensation, as agreed between such person and the Parish Council, or as determined by the award of an arbitrator appointed under sub-section (4) of section three of the Allotments Act, 1887, as amended by sub-section (2) of section ten of the Local Government Act, 1894, such person shall deliver up to the Parish Council all such lands as may be in his possession and as may be required for the Undertaking.

29. (*CXXII.*) If any party claim compensation in respect of an unexpired term or interest under any lease or grant of any lands by the Order authorised to be compulsorily hired, the Parish Council may require such party to produce the lease or grant in respect of which such claim is made, or sufficient evidence thereof, and if, after demand made in writing by the Parish Council, such lease or grant, or such evidence thereof be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

X.

With respect to the Limit of Time for Compulsory Hiring.

30. (*CXXIII.*) The powers of the Parish Council for the compulsory hiring of lands for the Undertaking shall not be exercised after the

expiration of the period prescribed by the Order, and if no period be prescribed by the Order not after the expiration of one year from the commencement of the Order.

XI.

With respect to Lands Hired, but not required for the Undertaking.

31. (*CXXVII.-CXXXII.*) Where the Parish Council are of opinion that any lands by the Order authorised to be compulsorily hired are no longer needed for the Uundertaking, the Parish Council shall, by an instrument executed at a meeting of the Council and under the hands and seals of the Chairman presiding at the meeting and two other members of the Council, declare that the lands are no longer needed for the Undertaking, and shall send by post a copy of such declaration to the party from whom such lands were hired, or any other person for the time being entitled to the receipt of the rent reserved by the lease under which such lands are held by the Parish Council.

Upon the receipt of such declaration, it shall be at the option of such party or other person to act upon the said declaration as if it were an offer of surrender of the unexpired term.

If within a period of two calendar months from the receipt by him of the said declaration such party or other person, by writing under his hand and seal, or, if such party or other person be a Corporation aggregate, under the Common Seal of such Corporation, addressed to the Parish Council, signify his acceptance of the surrender, the unexpired term shall be deemed to have been surrendered by act and operation of law as from the date of acceptance by such party or other person.

If within a period of two calendar months from the receipt by him of the said declaration such party or other person by writing under his hand and seal, or, if such party or other person be a Corporation aggregate, under the Common Seal of such Corporation, signify his refusal of the surrender, or, if within such period he fail to signify in the manner aforesaid his acceptance or refusal, the unexpired term shall not be deemed to have been surrendered by act and operation of law; and thereupon it shall be at the option of the Parish Council to make such offers to let the said lands as in accordance with the adapted provisions they are empowered to make.

32. (*CXXVII.-CXXXII.*) Where in pursuance of the adapted provisions the unexpired term in respect of lands by the Order authorised to be compulsorily hired shall be deemed to have been surrendered by act and operation of law, the Parish Council and the party from whom such lands have been hired, or any other person entitled to the receipt of the rent reserved by the lease under which such lands have been held by the Parish Council, may agree as to the

consideration for such surrender, and as to any matters as to which an arbitrator in relation to the surrender of lands at the end of any tenancy created by compulsory hiring or on the determination of any such tenancy is by sub-sections (2) and (7) of section ten of the Local Government Act, 1894, empowered to determine.

On failure of the parties to agree as to any matter herein-before mentioned, any question in dispute shall be referred to the arbitration of a single arbitrator appointed in accordance with the provisions of sub-section (4) of section three of the Allotments Act, 1887; and for the determination of such question that enactment and the provisions of sub-sections (2) and (7) of section ten of the Local Government Act, 1894, shall apply with the necessary modifications.

33. (*CXXVII.-CXXXII.*) Where in pursuance of the adapted provisions the unexpired term in respect of lands by the Order authorised to be compulsorily hired shall be deemed to have been surrendered by act and operation of law, the surrender shall be deemed to be valid and effectual notwithstanding any disability affecting any party to such surrender; and the adapted provisions with respect to the payment of and other dealing with compensation on the hiring of lands by the Order authorised to be compulsorily hired shall, with the necessary modifications, be deemed to apply to any amount agreed or awarded to be paid by the Parish Council on such surrender as aforesaid.

34. (*CXXVII.-CXXXII.*) Where in pursuance of the adapted provisions it is at the option of the Parish Council, as regards lands which in their opinion are no longer needed for the Undertaking, to make offers to let the said lands, they shall first offer to let the same to the tenant for the time being of the lands (if any) from which the said lands were originally severed.

Every such offer shall be made in writing, and shall specify the terms and conditions of the proposed letting.

If such tenant be desirous of hiring the said lands upon the terms and conditions specified in such offer, and within a period of one calendar month after such offer signify his acceptance thereof to the Parish Council, they shall let the lands to such tenant accordingly; and the parties shall, as soon as conveniently may be, execute such contract of tenancy as the circumstances of the case may require.

If such tenant be not desirous of hiring the said lands upon the terms and conditions specified in such offer, and within a period of one calendar month after such offer signify to the Parish Council his refusal of such offer, or if within such period he fail to signify to the Parish Council his acceptance or refusal of such offer, it shall be at the option of the Parish Council to make the like offer, with the like incidents and consequences, to any tenant for the time being of any lands immediately adjoining such first-mentioned lands.

If such tenant be not desirous of hiring the said lands upon the terms and conditions specified in such offer, and within a period of one calendar month after such offer signify to the Parish Council his refusal

of such offer, or if within such period he fail to signify to the Parish Council his acceptance or refusal of such offer, it shall be at the option of the Parish Council to let the said lands to any other person.

Provided that—

1. Every contract of tenancy in pursuance of the foregoing provisions shall be in such form and to such effect as to secure that the said lands when hired shall not, except with the consent of the party from whom the said lands have been compulsorily hired by the Parish Council, or of any other person entitled to receive the rent reserved by the lease under which the said lands have been held by the Parish Council, be used otherwise than for purposes wholly agricultural or wholly pastoral, or for purposes in part agricultural, and as to the residue pastoral, or be in whole or in part cultivated as a market garden, and that the period for which the said lands may be hired shall be less than the unexpired term vested in the Parish Council; and that
2. The terms and conditions of such contract of tenancy shall not impair or prejudicially affect any right, interest, or claim of the party from whom the said lands have been hired by the Parish Council, or any person for the time being entitled to the receipt of the rent payable by the said Council, in respect of any matter mentioned in section ten of the Local Government Act, 1894, and that, notwithstanding any such letting by the Parish Council as is authorised by the adapted provisions, such right or interest shall remain vested in, and such claim may be made by such party or person, as fully and effectually, and with the same incidents and consequences, as if the said lands had remained in the possession of the Parish Council and had been used by them for the Undertaking.

XII.

With respect to certain excepted Lands.

35. (*XCIX.-CVII.*) The adapted provisions and the Order shall not extend and apply to

Any lands belonging to Her Majesty the Queen, her Heirs and successors in right of the Crown, or in right of the Duchy of Lancaster; nor to

Any lands belonging to the Duchy of Cornwall; nor to

Any lands being common or waste lands or in the nature of common or waste lands.

Given under the Seal of Office of the Local Government Board, this Twenty-first day of May, in the year One thousand eight hundred and ninety-five.

(L.S.) G. Shaw Lefevre,
President.

Walter Foster,
Secretary.

PARISH AND DISTRICT COUNCILS.

Compulsory Purchase of Land (*a*).

Regulations and Adaptations under Section 9 *of the Local Government Act*, 1894.

(GENERAL ORDER, 22nd May, 1895.)

To the County Council of every Administrative County in England and Wales, except the Administrative County of London ;

To the Urban District Council of each Urban District in England and Wales which is not a County Borough ;—

To the Rural District Council of each Rural District in England and Wales :—

To each Parish Council in England and Wales :—

And to all others whom it may concern.

Whereas by section 9 of the Local Government Act, 1894, it is enacted that—

"9.—(1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

"(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire, they may represent the case to the county council, and the county council shall inquire into the representation.

"(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be) cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

"(4.) After the completion of the inquiry, and considering all objections made by any person interested, the county council may make an order for putting in force, as respects the said land or

(*a*) As to the compulsory *hiring* of land by a parish council for allotments, see the Order of May 20th, 1895, *ante*, p. 798.

any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

"(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

"(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

"(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then after the prescribed period—

"(*a.*) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order:

* * * *

"(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (*a*), (*b*), and (*c*) of sub-section (4) of that section are incorporated with this section and shall apply accordingly: Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

* * * *

"(13.) Sub-section (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly."

And whereas by section 75 of the said Act it is enacted that, in that Act, unless the context otherwise requires, the expression "prescribed" means prescribed by order of the Local Government Board:

Now therefore, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, do, by this Our Order, and until We shall otherwise Direct, Prescribe as follows; that is to say,—

ARTICLE I.—In every case in which a County Council on a representation by a Parish Council under sub-section (2) of section nine of the Local Government Act, 1894, or on any proceeding under the Allotments Acts, 1887 and 1890, propose to proceed under section nine of the Local Government Act, 1894, and with a view to such proceeding, to cause public Inquiry to be made, the County Council shall, not less than six weeks before the day on which it is proposed that the Inquiry shall be held, cause notice to be given in such form and in such manner as are herein-after prescribed:—

I.—The notice shall specify the particulars of the representation or of the proceeding under the Allotments Acts, 1887 and 1890, and shall state that the County Council propose to cause public Inquiry to be made.

II.—The notice shall further specify as regards any land proposed to be taken, the quantity and description, and the situation of the land proposed to be taken, the names of the owners, lessees, and occupiers of the said land, and the purpose for which the said land is proposed to be taken.

III.—A printed copy of the notice shall be sent by post by the County Council to each owner, lessee, and occupier of the land proposed to be taken, or, if such owner, lessee, or occupier is absent abroad, to his agent.

ARTICLE II.—The County Council, not more than one calendar month and not less than two weeks before the holding of the public Inquiry, shall cause a notice to the like effect as that of the notice prescribed by Article I., and containing also a statement of the day, time, and place appointed for the holding of the Inquiry, and of the person or persons by whom the Inquiry is to be held, to be published and given in accordance with the following requirements; that is to say,

I.—The notice shall be published in the Parish, or in the case of any proceeding under the Allotments Acts, 1887 and 1890, relating to an Urban District, in the District by posting a printed copy of the notice as a bill or placard in every such place in the Parish or District as is ordinarily used for posting public or parochial notices.

II.—A printed copy of the notice shall be sent by post by the County Council:—

(a.) Where the County Council propose to proceed on a representation of the Parish Council under sub-section (2) of section nine of the Local Government Act, 1894,

to the Parish Council: and

(b.) In the case of any proceeding under the Allotments Acts, 1887 and 1890:

i. Where the proceeding is taken on a petition under section two of the Allotments Act, 1890, by persons qualified as mentioned in that section,—
to each of the petitioners.

ii. Where the proceeding is taken on the petition of the Parish Council,—
to the Parish Council.

iii. Where the proceeding is taken on the petition of the District Council,—
to the District Council: and

(c). In every case to each owner, lessee, and occupier of the land proposed to be taken, or, if such owner, lessee, or occupier is absent abroad, to his agent.

Article III.—1. The County Council shall, within ten days after the making of the Order, cause a copy of any Order made by them under section nine of the Local Government Act, 1894, to be served by post in accordance with the following requirements; that is to say,—

i. Where the Order relates to land proposed to be taken by the Parish Council for any purpose to which sub-section (2) of the said Section applies:
A copy of the said Order shall be sent by post to the Parish Council.

2. Where the Order relates to land proposed to be taken for the purpose of allotments:—

i. If the proceeding is taken upon the petition under section two of the Allotments Act, 1890, of persons qualified as mentioned in that section or upon the petition of the Parish Council,—
to the Parish Council.

ii. If the proceeding is taken upon the petition of the District Council,—
to the District Council.

3. In every case a copy of the said Order shall be sent by post to each owner, lessee, and occupier of the land proposed to be taken, or, if such owner, lessee, or occupier is absent abroad, to his agent.

Article IV.—Every copy of a notice or order which in pursuance of any provision in Articles I., II., and III. is required to be sent or served by post to or upon any council or person therein mentioned shall be so sent or served by a registered letter containing such copy, and properly addressed, prepaid, and posted to such council or to such person at his usual or last known place of abode.

Article V.—The period within which a memorial by a person interested praying that an Order made under section nine of the Local Government Act, 1894, shall not become law without further inquiry

may be presented to the Local Government Board shall be the period of one calendar month after the making of the said Order.

ARTICLE VI.—For the purposes of section nine of the Local Government Act, 1894, except so far as by sub-section (18), the said section is rendered applicable to a county borough, the several provisions herein-before mentioned of the Allotments Acts, 1887 and 1890, shall be adapted in the form and manner set forth in the Schedule to this Order.

SCHEDULE.

THE ALLOTMENTS ACT, 1887.

Section 2 (2).

(2.) A County Council or a District Council carrying into effect an Order made under section nine of the Local Government Act, 1894, for putting in force as respects land to be taken for the purpose of allotments the provisions of the Lands Clauses Act with respect to the purchase and taking of land otherwise than by agreement shall not under such Order acquire land for allotments save at such price or rent that in the opinion of the said Council all expenses, except such expenses as are incurred in making roads to be used by the public, incurred by the said Council in acquiring the land and otherwise in relation to the allotments may reasonably be expected to be recouped out of the rents obtained in respect thereof.

Section 3 (5), (6), (7) *and* (8).

(5.) In construing, for the purposes of section nine of the Local Government Act, 1894, the provisions of the Lands Clauses Acts as incorporated with the said section, and the provisions of the said Acts and of sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, as incorporated with an Order which has been made and has become final under the said section, the Local Government Act, 1894, together with any such Order, shall be deemed to be the Special Act; and the Parish Council, for any purpose for which the said Council are authorised to acquire land by agreement, or for any purpose in relation to which land authorised to be acquired otherwise than by agreement may be assured by the said Council, and the County Council carrying into effect, for such last-mentioned purpose, any such Order as is herein-before mentioned, and the County Council or the District Council carrying into effect, for the purpose of allotments, any such Order as is herein-before mentioned, shall respectively, as the case requires, be deemed to be the promoters of the Undertaking or the Company, and the word "land" in relation to any purpose for which the Parish Council are authorised to acquire land or in relation to allotments shall have the same meaning as in the Allotments Act, 1887.

(6.) Where land is purchased under an Order in pursuance of section nine of the Local Government Act, 1894, otherwise than by agreement the following provisions shall apply :—

(a.) The County Council and the Local Government Board shall not make an Order for purchasing any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway or canal company which is or may be required for the purposes of their undertaking :

(b.) The County Council and the Local Government Board shall, in making an Order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner, and shall, so far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner.

(7.) For the purpose of the hiring of land by a Parish Council for a purpose for which the said Council are authorised to acquire land, any person, or body of persons, or body corporate authorised to sell land to the Sanitary Authority for the purposes of the Allotments Act, 1887, may, without prejudice to any other power of leasing, lease land to the Parish Council, without any fine or premium, for a term not exceeding thirty-five years.

(8.) The County Council and the Local Government Board shall not make an Order in pursuance of section nine of the Local Government Act, 1894, for purchasing any right to coal or metalliferous ore.

Section 11.

(1.) Where a Parish Council are of opinion that any land or any part of any land acquired by the said Council by agreement in pursuance of section nine of the Local Government Act, 1894, or assured to the said Council in pursuance of sub-section (14) of section nine of the Local Government Act, 1894, for a purpose for which the said Council are authorised to acquire land, is no longer needed for the purpose for which the said land was acquired, or that any other land more suitable for such purpose is available and may be acquired by the said Council by agreement, the said Council may, with the sanction of the County Council, and subject to the provisions of sub-section (2) of section eight of the Local Government Act, 1894, sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(2.) Where a Parish Council are of opinion that any land or any part of any land assured to the said Council in pursuance of sub-section (14) of section nine of the Local Government Act, 1894, for the purpose of allotments is no longer needed for such purpose, the said Council may, with the sanction of the County Council, and subject to the provisions of sub-section (2) of section eight of the Local Government Act, 1894,

sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(3.) Where a District Council having carried into effect an Order which has been made and has become final under section nine of the Local Government Act, 1894, for putting in force for the purpose of allotments the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, are of opinion that any land or any part of any land acquired by the said Council, is no longer needed for the purpose of allotments, or that any other land more suitable for such purpose is available and may be acquired by agreement, the said Council, with the sanction of the County Council, may sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(4.) The proceeds of a sale under the foregoing provisions of any land or any part of any land acquired by or assured to a Parish Council, and any money received by the said Council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the said Council in respect of the land acquired or assured as aforesaid, or for any purpose for which capital money may be applied and which is approved by the Local Government Board; and the interest thereon (if any) and any money received from the letting of the land may, subject to the provisions of section eight of the Local Government Act, 1894, be applied in aid of the expenses of the said Council under the Local Government Act, 1894.

(5.) The proceeds of a sale under the foregoing provisions of any land or any part of any land acquired by a District Council carrying into effect an order which has been made and has become final under section nine of the Local Government Act, 1894, for putting in force for the purpose of allotments the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, shall be applied, and any surplus remaining, any interest, and any money received from the letting of the land may or shall be applied, as nearly as may be in the same manner, and with the same incidents and consequences, as if the said land had been acquired and otherwise dealt with in pursuance of the Allotments Act, 1887.

(6.) Sections one hundred and twenty-eight to one hundred and thirty-two (both inclusive) of the Lands Clauses Consolidation Act, 1845 (relating to the right of pre-emption of superfluous lands), shall apply upon any sale of any land in pursuance of the foregoing provisions; but save as aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not be deemed to be incorporated in section nine of the Local Government Act, 1894, or in any Order made under that section.

THE ALLOTMENTS ACT, 1890.

Section 3.

(2.) For the purpose of any business under section nine of the Local Government Act, 1894, relating to any District or Parish wholly or partly situate in an electoral division, the County Councillor representing that division shall, if not already appointed, be an additional member of the Standing Committee appointed for the purposes of the Allotments Acts, 1887 and 1890.

(3.) Any representation by a Parish Council under sub-section (2) of section nine of the Local Government Act, 1894, shall, as of course, and without any Order of the County Council, be referred to the said Standing Committee, who shall forthwith inquire into the circumstances, and shall report the result to the County Council.

(4.) Where the County Council are satisfied that the circumstances are such as to justify them in proceeding under section nine of the Local Government Act, 1894, the public inquiry mentioned in sub-section (3) of the said section shall be held by such one or more members of the said Standing Committee, or such officer of the County Council as the said Standing Committee may appoint to hold the same.

Given under the Seal of Office of the Local Government Board, this Twenty-second day of May, in the year One thousand eight hundred and ninety-five.

(L.S.) G. SHAW LEFEVRE,
President.

WALTER FOSTER,
Secretary.

The following Memorandum was issued with the foregoing Order.

The provisions of this Order relate to cases of two kinds, viz.: (1) Representations by Parish Councils under section 9 (2) of the Local Government Act, 1894; and (2) certain proceedings under the Allotments Acts, 1887 and 1890.

As to cases of the first description, it may be pointed out that if a Parish Council are unable to purchase by agreement and on reasonable terms suitable land for any purpose (other than allotments) for which they are authorised to purchase land (as, for example, for a purpose within the scope of the powers of the Parish Council under section 8 of the Local Government Act, 1894), they may represent the case to the County Council. If, on any such representation, the County Council are satisfied that suitable land for the purpose of the Parish Council cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the County Council in proceeding under section 9 of the Local Government Act, 1894, the County Council are then to cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners,

lessees, and occupiers of the land proposed to be taken as may be prescribed by the Local Government Board.

In Articles I. and II. of the Order, the Local Government Board have prescribed regulations as to the preliminary notices and as to the public inquiry.

Article III., in pursuance of sub-section 6 of section 9, prescribes the mode of service of Orders made by County Councils under the section.

Article IV. relates to the same matter, and also the mode of serving copies of the notices referred to in Articles I. and II.

Article V. prescribes the period within which a memorial by some person interested, praying that an order made under section 9 shall not become law without further inquiry, may be presented to the Board.

Article VI. prescribes adaptations of the provisions of sub-sections (5), (6), (7), and (8) of section 3, and of section 11 of the Allotments Act, 1887, and of section 3 of the Allotments Act, 1890.

(2.) As regards proceedings under the Allotments Acts, 1887 and 1890, it may be observed that the provisions of the Order relate to proceedings taken on (i.) the petition under section 2 of the Allotments Act, 1890, of persons qualified as mentioned in that section; (ii.) on the petition of the Parish Council: and (iii.) on the petition of the District Council.

(3.) As to cases (i.) and (ii.), the following explanation will show the various steps which are necessary to bring matters to a point at which the County Council may elect to take action under section 9 of the Local Government Act, 1894:—

Under section 2 of the Allotments Act, 1887, on a representation in writing to the District Council of any urban or rural district by any six parliamentary electors or ratepayers resident in the case of an urban district, in that district, and in the case of a rural district, in some parish in that district, that the circumstances of the urban district or parish are such that it is the duty of the District Council to take proceedings therein under that Act, the District Council are to take such representation into consideration.

Where such a representation has been made, and any six persons qualified to make the representation consider that the circumstances of the district or parish are such as to make it the duty of the District Council to take proceedings therein under the Allotments Act, 1887, and that the District Council (not being the town council of a borough) have failed to acquire land adequate and suitable in quality and position to provide a sufficient number of allotments, these persons, under section 2 (1) of the Allotments Act, 1890, may petition the County Council, stating the facts and requesting the County Council to put into force the Act of 1887, for the purpose of providing a sufficient number of allotments for the district or parish.

Where a parish in a rural district has a Parish Council, that Council may exercise the power of the six parliamentary electors in the matter of the preliminary representation; but the power thus conferred upon the Parish Council is additional to and not in substitution for that of

the electors; and in the case of such a parish the further power of petitioning the County Council is exerciseable by the Parish Council as well as by the electors.

In an urban district, however, the representation and the petition can only come from the six registered parliamentary electors or ratepayers resident in the district.

But the representation to the District Council is a condition precedent to the exercise of the power of petitioning, and the statement of facts which the petitioners are to make should include a reference to the prior representation as indicating a basis for the action of the petitioners.

For the proper investigation of matters arising upon such petitions the Allotments Act, 1890, provides for the appointment by the County Council of a Standing Committee. Annually, at the meeting for the election of chairman, the County Council are to appoint under the Local Government Act, 1888, a Standing Committee not exceeding one-fourth of the whole council. For business relating to any district or parish wholly or partly situate in an electoral division, the county councillor representing that division is, if not already appointed, to be an additional member of the Committee. The petition is, as of course, and without any order of the Council, to be referred to the Standing Committee. The Committee, on being satisfied of the *bona fides* of the application, are forthwith to cause a local inquiry into the circumstances to be made and to report the result to the Council.

When this report has been received, it will rest with the County Council to decide whether they will proceed further under the Allotments Act, 1890, or whether they will have recourse to the new procedure authorised by section 9 of the Local Government Act, 1894.

It may be added that (1) in a rural parish having a Parish Council, procedure with a view to an order under section 9 of the Local Government Act, 1894, on the petition of parliamentary electors, or ratepayers, or of the Parish Council will not be available unless it can be shown that there has been failure on the part of the District Council to exercise their powers, and that land cannot be acquired on reasonable terms by voluntary agreement; and that (2) in the case of a rural parish not having a Parish Council, the procedure will not be applicable unless the parish meeting has under section 19 of that Act been invested with the powers in this particular of the Parish Council. For without a Parish Council or a meeting invested with its powers there will be nobody to whom the land acquired by the County Council can be assured under sub-section 14 of section 9 of the Local Government Act, 1894.

In relation to procedure under section 9, Article I. prescribes the notice to be given in the parish or in the district (if it be urban), and to the owners, lessees, and occupiers of the land proposed to be taken. Article II. prescribes the notice of the public inquiry; Article III. prescribes the mode of serving copies of Orders made by County Councils; Article IV. relates to the same subject and also to the

service of copies of the notices prescribed by Articles I. and II.; Article V. prescribes the period within which a memorial by a person interested, praying that an Order shall not become law without further inquiry, may be presented to the Local Government Board; and Article VI. prescribes adaptations of sub-section (2) of section 2, sub-sections (5), (6), (7), and (8) of section 3, and of section 11 of the Allotments Act, 1887, and section 3 of the Allotments Act, 1890.

(4.) With respect to case (iii), in which proceedings under the Allotments Acts, 1887 and 1890, are taken on the petition of the District Council, it may be said that the occasion for resorting to the procedure which section 9 of the Local Government Act, 1894, authorises, may arise at a stage in proceedings under the Allotments Act, 1887, at which the District Council are met by the difficulty that suitable land sufficient for allotments for their district or any parish in their district cannot be acquired by them by hiring or purchase by agreement at a reasonable price or rent, and subject to reasonable conditions.

At this stage the District Council, under section 3 (2) of the Allotments Act, 1887, may petition the County Council. On the receipt of such a petition it will be referred for investigation and report to the Standing Committee appointed by the County Council under section 3 of the Allotments Act, 1890.

Assuming that on the report of the Standing Committee the County Council consider that the case is one in which they should proceed under section 9 of the Local Government Act, 1894, it will be incumbent upon them in taking the various steps indicated in that enactment to observe the requirements of Articles I.—IV. of the Order. Articles V. and VI. also apply to cases in which District Councils are concerned.

Local Government Board,
May, 1895.

LIGHT RAILWAY (*a*).

RULES DATED SEPTEMBER, 1896, MADE BY THE BOARD OF TRADE WITH RESPECT TO APPLICATIONS TO THE LIGHT RAILWAY COMMISSIONERS FOR ORDERS AUTHORISING LIGHT RAILWAYS.*

Notice of Proposed Application.

1. Notice of intention to apply to the Light Railway Commissioners for an Order authorising a light railway, or for an amending Order, Notice by advertisement.

* *Official Note.*—These rules will regulate the procedure before the Light Railway Commissioners where a scheme for a light railway has been matured and it is intended to make a formal application for an Order.

The Commissioners will at all times be prepared to give every facility in their power for considering and maturing proposals for the construction of light railways to be submitted to them.

(*a*) See the Light Railways Act, 1896, *ante*, p. 720.

Rule 1.

must be published by advertisement in each of two consecutive weeks in the month of April or of October, in at least one local newspaper circulating in the area or part of the area through which it is proposed to make the railway.

Contents of notice.

2. The notice must describe generally the line of the railway and its termini, and the lands proposed to be taken, stating the quantity and the purpose for which it is proposed to take them; it must state the proposed gauge and motive power of the railway; it must be subscribed with the name of the person, company, or council responsible for the publication of the notice (hereinafter referred to as "the promoters"); and must name a place where a plan of the proposed works and of the lands to be taken and a book of reference to the plan and a section of the proposed works may be seen at all reasonable hours, and where copies of the draft Order can be obtained on payment of not exceeding one shilling per copy.

The notice must state that objections should be made in writing to the Light Railway Commissioners in accordance with Rule 31.

Deposit with local authorities.

3. Copies of the draft Order and of the plan and book of reference and section and of the estimate hereinafter mentioned must be deposited by the promoters during the month of May or of November, with the clerk of the county council, and of every borough, district, and parish council in or through whose county, borough, district, or parish, any part of the railway is proposed to be made; and shall be open to inspection during office hours.

With the above documents there must also be deposited a sheet or sheets of the ordnance map, on the scale of not less than one inch to a mile, with the line of railway indicated thereon, so as to show its general course and direction.

Deposits with government departments.

4. Copies of the draft Order and of all the above documents, must be deposited by the promoters during the month of May or of November, with the Board of Trade, and copies of the draft Order with the Treasury, the Board of Agriculture, the Postmaster-General, the Commissioners of Customs and of Inland Revenue, the Admiralty, the War Office, the Office of Woods and Forests, and the Office of Works, and with the Secretary for Scotland in the case of proposed railways in Scotland.

Provided that as regards the provisions of this Rule and of Rules 1 and 3, in the year 1896 the month of November shall be substituted for the month of October, and the month of December for the month of November.

Plans, Book of Reference, and Sections.

Plan.

5. Every plan must be drawn to a scale of not less than four inches to the mile, and must describe the lands intended to be taken, and the line or situation of the whole of the railway (no alternative line or work being in any case permitted), and the lands in or

through which it is to be made, or through which any communication to or from the railway shall be made. **Rule 5.**

As to limits of deviation.

6. Where it is the intention of the promoters to apply for powers to make any lateral deviation from the line of the proposed railway, the limits of such deviation shall be defined on the plan, and all lands included within such limits shall be marked thereon.

Buildings, etc. on enlarged scale.

7. Unless the whole of such plan shall be upon a scale of not less than a quarter of an inch to every one hundred feet, an enlarged plan shall be added of any building, yard, courtyard, or land within the curtilage of any building, or of any ground cultivated as a garden, either in the line of the proposed work, or included with the limits of the said deviation, on a scale of not less than a quarter of an inch to every one hundred feet.

Distances to be marked.

8. The distances from one of the termini must be shown in miles and furlongs on the plan, and a memorandum of the radius of every curve not exceeding one mile in length, shall be noted on the plan in furlongs and chains.

Tunnelling to be marked.

9. Where tunnelling as a substitute for open cutting is intended, the same shall be marked by a dotted line on the plan, and no work shall be shown as tunnelling in the making of which it will be necessary to cut through or remove the surface soil.

Diversion of roads, etc.

10. If it be intended to divert widen or narrow any public carriage road, navigable river, canal, or railway, the course of such diversion and the extent of such widening or narrowing shall be marked on the plan.

Case of junctions with other lines.

11. When a railway is intended to form a junction with an existing or authorised line of railway, the course of such existing or authorised line of railway shall be shown on the deposited plan for a distance of 800 yards on either side of the proposed junction on the same scale as the scale of the general plan.

Case of rails along road.

12. If it be intended to lay any part of the railway along a road or street, the plan shall show at what distance from an imaginary straight line drawn along the centre of such road or street it is proposed to lay th

Book of reference.

13. The book of reference shall contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses in the line of the proposed railway or within the limits of deviation as defined on the plan, and shall describe such lands and houses respectively.

The book of reference shall also contain the name of the road authority of any road or street along which it is proposed to lay any part of the railway.

Scale of sections.

14. The section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every one hundred feet, and shall show the surface of the ground marked on the plan, the intended level of the proposed railway, the height of

Rule 14.

every embankment and the depth of every cutting, and a datum horizontal line, which shall be the same throughout the whole length of the railway or any branch thereof respectively, and shall be referred to some fixed point (stated in writing on the section), near one of the termini of the railway.

In every section the line of the railway marked thereon shall correspond with the upper surface of the rails.

Vertical measures to be marked at change of gradient.

15. Distances on the datum line shall be marked in miles and furlongs, to correspond with those on the plan; a vertical measure from the datum line to the line of the railway shall be marked in feet and inches, or decimal parts of a foot, at the commencement and termination of the railway, and at each change of the gradient or inclination thereof; and the proportion or rate of inclination between every two consecutive vertical measures shall also be marked.

Height of railway over or depth under surface of roads, etc. to be marked.

16. Wherever the line of the railway is intended to cross any public carriage road, navigable river, canal, or railway, the height of the railway over or depth under the surface thereof, and the height and span of every arch of all bridges and viaducts by which the railway will be carried over the same, shall be marked in figures at every crossing thereof, and where the railway will be carried across any such public carriage road or railway, on the level thereof, such crossing shall be so described on the section, and it shall also be stated if such level will be unaltered.

Cross sections in certain cases.

17. If any alteration be intended in the water level of any canal, or in the level or rate of inclination of any public carriage road or railway, which will be crossed by the railway, then the same shall be stated on the section, and each alteration shall be numbered; and cross sections in reference to the numbers, on a horizontal scale of not less than one inch to every three hundred and thirty feet, and on a vertical scale of not less than one inch to every forty feet shall be added which shall show the present surface of such road, canal, or railway, and the intended surface thereof, when altered; and the greatest of the present and intended rates of inclination of the portion of such road or railway intended to be altered shall also be marked in figures thereon, and where any public carriage road is crossed on the level, a cross section of such road shall also be added; and all such cross sections shall extend for two hundred yards on each side of the centre line of the railway.

Embankments and cuttings.

18. Wherever the extreme height of an embankment, or the extreme depth of any cutting, shall exceed five feet, the extreme height over or depth under the surface of the ground shall be marked in figures on the section; and if any bridge or viaduct of more than three arches shall intervene in any embankment, or if any tunnel shall intervene in any cutting, the extreme height or depth shall be marked in figures on each of the parts into which such embankment or cutting shall be divided by such bridge, viaduct, or tunnel.

19. Where tunnelling, as a substitute for open cutting, or a viaduct as a substitute for solid embankment, is intended, the same shall be marked on the section, and no work shall be shown as tunnelling, in the making of which it will be necessary to cut through or remove the surface soil. **Rule 19.** Tunnelling and viaduct to be marked.

20. When a railway is intended to form a junction with an existing or authorised line of railway, the gradient of such existing or authorised line of railway shall be shown on the deposited section, and in connection therewith, and on the same scale as the general section, for a distance of 800 yards on either side of the point of junction. In case of junctions gradient of existing line to be shown on section.

Notices to Owners, Lessees, and Others.

21. During the month of April or of October the promoters must serve a notice on the owners, or reputed owners, lessees, or reputed lessees, and occupiers of all lands intended to be taken or being within the limits of deviation shown on the deposited plan, describing in each case the particular lands intended to be taken or being within such limits, and inquiring whether the person so served assents or dissents to the taking of such lands, and requesting him to state any objections he may have to such lands being taken. Service of notices on landowners and others.

Every such notice shall be as nearly as may be in the form set out in the schedule to these Rules.

22. During the month of April or October the promoters must also serve a notice of the intended application on the owner, or reputed owner, lessee, or reputed lessee, of any railway, tramway, or canal which will be crossed or otherwise interfered with by the proposed railway; and on the road authority (where other than a county, borough, district, or parish council) of any road or street along which it is proposed to lay any rails, or which will be otherwise interfered with by the proposed railway; and such notice shall state the place or places where a plan or plans of the proposed railway has or have been or will be deposited. Notice to owners of railway, etc.

Provided that as regards the provisions of this Rule and of Rule 21, in the year 1896 the month of November shall be substituted for the month of October.

23. Where an amending Order proposes to authorise the promoters to vary or to relinquish the whole or any part of a railway authorised by a former Order, the promoters must during the month of April or October serve notice of the proposal on the owners, or reputed owners, lessees, or reputed lessees, and occupiers of the lands in which any part of the said railway is situate. Notice of relinquishment of works.

24. Where an amending Order proposes to repeal or alter any provision contained in a former Order for the protection or benefit of any person, public body, or company specifically named, the promoters must during the month of April or October serve notice of the intention to repeal or alter such provision on every such person, public body, or company. Notice of repeal of protective provisions.

Rule 25. *Estimate.*

Estimates.

25. An estimate of the expenses of the proposed railway (including the expense of acquiring land and all incidental expenses) must be made and signed by the person making the same.

26. The estimate shall be in the following form or as near thereto as circumstances may permit :—

Estimate of the proposed Light Railway.

			Whether Single or Double.	
Lines No.				
Length of line	miles fgs. chs.			
Gauge				
	Cubic Yards.	Price per Yard.	£ s. d.	£ s. d.
Earthworks :				
Cuttings—Rock				
Soft soil				
Roads				
Total				
Embankments, including roads		Cubic yards		
Bridges—Public roads		Number		
Accommodation bridges and works				
Viaducts				
Culverts and drains				
Metallings of roads and level crossings				
Gatekeepers' houses at level crossings				
Permanent way, including fencing :	miles fgs. chs. at	Cost per mile. £ s. d.		
Permanent way for sidings, and cost of junctions				
Stations				
Contingencies		Per cent.		
Land and buildings :		a. r. p.		
Total		£		

The same details for each branch, and general summary of total cost.

Application to the Commissioners.

Documents to accompany application.

27. Every application to the Commissioners for an Order must be made in the month of May or of November except in the year 1896, when it must be made in the month of December, and must be in the case of a corporate body under the seal of such body, and in any other case signed by the promoter or promoters, or if there

are more than two then by any three of them, and must be accompanied by— Rule 27

(a) a copy of the advertisement of the intention to apply for the Order;

(b) three copies of the Draft Order and of each of the documents required by these Rules to be deposited:

(c) a statement as to the proposed gauge and motive power of the railway;

(d) a list of the owners, or reputed owners, lessees, or reputed lessees, and occupiers on whom notices have been served, and a statement as far as can then be made whether in each case they assent, dissent, or are neuter;

(e) a list of the county borough district and parish councils in or through any part of whose county district or parish any part of the railway is proposed to be made, and a statement whether or not they have intimated assent or dissent to the proposal;

(f) a list of the railway, tramway, or canal companies (if any) on whom any notice has been served under these Rules, and a statement whether or not they have intimated assent or dissent to the proposal;

(g) a statement whether any consent of the Board of Agriculture required to any grant of land or to the acquisition of any common land proposed to be authorised by the draft Order has been obtained;

(h) a statement whether it is proposed that the Council of any county borough or district shall expend or advance any money, and if so, of the nature and amount of such expenditure or advance;

(i) a statement whether it is proposed to apply to the Treasury for the advance of any money, and if so, of the amount of the advance sought;

(k) a certificate that a fee of 50*l.* has been paid to the Board of Trade.

(l) a certificate, in the case of an application by an existing company, that the members of the company have assented to the application by such a resolution as is required by the Standing Orders of Parliament in the case of an application to Parliament by such company.

General Provisions as to Notices.

28. Notices and other such documents under these Rules may be in writing or print, or partly in writing and partly in print; and shall be sufficiently authenticated if signed by the clerk of the council, or by some principal officer of the company, or by the Authentication, etc., of notices.

Rule 28. promoter or any two or more of the promoters, on whose behalf the notice or other document is served.

Service of notices.

29. Notices and any other documents required or authorised to be served under the Rules may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises; or if there is no person on the premises who can be so served then by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice or other document was properly addressed and put into the post.

Any notice by these Rules required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given without further name or description.

Fees.

Fee payable to Board of Trade.

30. Before lodging any application with the Commissioners a fee of 50*l.* must be paid by the promoters to the Board of Trade, by cheque in favour of an Assistant Secretary of the Board of Trade.

General.

31. All communications to the Commissioners should be on foolscap paper and written on one side only, and should be addressed to—

The Secretary,
Light Railway Commission,
23, Great George Street,
London, S.W.

32. In the case of an application for an amending Order, such of the requirements of these Rules as are inapplicable will be dispensed with.

33. These Rules shall remain in force until modified by the Board of Trade.

COURTENAY BOYLE,
Secretary.

The Board of Trade,
September 1896.

SCHEDULE. **Schedule.**

Form of Notice to Landowners and others.

SIR,

WE beg to inform you that application is intended to be made to the Light Railway Commissioners for an Order authorising a light railway from to , and that the property mentioned in the annexed schedule or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said railway, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of yards on either side of the said line which will be applied for.

We also beg to inform you that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the clerks of the (*specify county and other councils as the case may be*) on or before the last day of May [*or* November] and that copies of so much of the said plan and section as relates to the (*parish*) in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the (*clerk of the parish, district, or borough council*) on or before the day of on which plan your property is designated by the numbers set forth in the annexed schedule.

As we are required to report whether you assent to or dissent from the proposed undertaking, you will oblige us by writing your answer of assent or dissent in the form left herewith, and by stating any objections you may have to your property being taken, and returning the same to us with your signature on or before the day of next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

We are, etc.,

Schedule referred to in the foregoing notice describing the property therein alluded to:—

—	Parish, Township, Townland, or extra-parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.
Property on the line of the proposed work, or within the limits of the deviation intended to be applied for.						

I, the undersigned, assent to [dissent from] my property being taken for the proposed work [and my objections are that].

LOCAL INQUIRIES.

Regulations as to Inquiries and Notices under Section 57 of the Local Government Act, 1888, *ante*, *p.* 111 (14*th September*, 1889).

To the County Councils for the several Administrative Counties in England and Wales;—

And to all others whom it may concern.

Whereas by sub-sections (1), (2), and (3) of section 57 of the Local Government Act, 1888, it is enacted as follows:—

"57.—(1.) Whenever a county council is satisfied that a primâ facie case is made out as respects any county district not a borough, or as respects any parish, for a proposal for all or any of the following things; that is to say,—

"(*a*) the alteration or definition of the boundary thereof;

"(*b*) the division thereof or the union thereof with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish;

"(*c*) the conversion of any such district or part thereof, if it is a rural district, into an urban district, and if it is an urban district, into a rural district, or the transfer of the whole or any part of any such district from one district to another, and the formation of new urban or rural districts:

"(*d*) the division of an urban district into wards; and

"(*e*) the alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any district council, or of the apportionment of such members among the wards,

"the county council may cause such inquiry to be made in the locality, and such notice to be given, both in the locality, and to the Local Government Board, Education Department, or other Government department as may be prescribed, and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

"(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, and otherwise as the county council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the members among the wards shall come into operation upon being finally approved by the county council.

"(3.) In any other case the order shall be submitted to the Local Government Board; and if within three months after such notice

of the provisions of the order as the Local Government Board determine to be the first notice, the council of any district affected by the order, or any number of county electors registered in that district or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, and determine whether the order is to be confirmed or not."

And whereas by sub-section (4) of section 87 of the said Act it is enacted that—

"Where any matter is authorised or required by this Act to be prescribed, and no other provision is made, declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board."

And whereas in regard to the matters required by the said section 57 to be prescribed no provision other than that contained in the said section 87 is made, declaring how such matters are to be prescribed:

Now therefore, We, the Local Government Board, in pursuance of the powers given to Us in that behalf, do, by this Our Order, and until We shall otherwise Direct, Prescribe and Determine as follows, with respect to the Inquiries to be made and the notices to be given for the purposes of the said section 57 of the Local Government Act, 1888, the manner of giving such notices, and the several other matters to be prescribed and determined for the purposes of the said section; that is to say,—

Article I.—(1.) Prior to any Order being made by a County Council in regard to a proposal for all or any of the things specified in sub-section (1) of section 57 of the Local Government Act, 1888, a local Inquiry, at which all persons interested may attend and be heard, shall be held in regard to the proposal as the Council may direct, either by a Committee of the County Council, or by some Person appointed by the County Council to hold such Inquiry.

(2.) If the proposal relate to one or more County Districts, the said Inquiry shall be held at some convenient place in such district or in one of such districts; and if the proposal relate to a parish or parishes, the said Inquiry shall be held either in such Parish or in one of such Parishes, or at such place in the neighbourhood as may, in the opinion of the Committee or Person by whom the Inquiry is to be held, be most convenient for the purpose.

(3.) Before the day when the Inquiry is to be held, public notice of the purport of the proposal, and of the day, time, and place fixed for the Inquiry in regard to it, shall be given by the County Council by advertisement in two successive weeks in some local newspaper circulating in the locality to which the proposal relates.

ARTICLE II.—At least fourteen days before the day when the Inquiry is to be held, a printed Notice of the purport of the proposal, and of the day, time, and place for the Inquiry shall also be published in the manner herein-after described, and shall be sent to the several Government Departments and Local or other Authorities herein-after specified; that is to say,—

(1.) A copy of the said Notice shall be posted as a bill or placard in such places in the County District or Districts or Parish or Parishes interested in the proposal as are ordinarily made use of for posting public or parochial notices.

(2.) In any case where the proposal relates to the alteration of or other dealing with any Sanitary District, a copy of the Notice shall be sent by the County Council to the Sanitary Authority of such District.

(3.) In any case where the proposal relates to the alteration of or other dealing with any Parish a copy of the Notice shall be sent by the County Council to the Overseers of the Poor of such Parish; to the Guardians of the Poor of the Union in which such Parish is comprised; to the School Board (if any) for such Parish or for any part thereof; to the Highway Authority or Authorities of the Parish; to the Burial Board (if any) for such Parish or for any part thereof; and to the Urban Sanitary Authority (if any) in whose district such Parish or any part thereof is comprised.

(4.) A copy of the Notice shall be sent by the County Council to any Local Authority which, in the opinion of the County Council, is specially interested in the proposal.

(5.) A copy of every such Notice shall be sent by the County Council to the Local Government Board; and in any case where the proposal relates to all or any of the things mentioned in paragraphs (*a*), (*b*), and (*c*) of sub-section (1) of section 57 of the said Act, a copy of the Notice shall be sent by the County Council to the Public Works Loan Commissioners, the Director General of the Ordnance Survey at Southampton, and to the Registrar General; and in any case where the proposal relates to the alteration or definition of the boundary of any Parish a copy of the Notice shall be sent to the Education Department.

ARTICLE III.—Public notice of the provisions of any Order made by a County Council under sub-section (1) of section 57 of the said Act shall be given by the County Council by advertisement in two successive weeks in some local newspaper circulating in each District or Parish affected by the Order; and the first of such advertisements shall be published within fourteen days after the making of the Order.

The said advertisement shall contain either a copy of the Order or a statement of the effect of the Order, and shall also contain a statement of the time and place or places during and at which copies of the Order may be inspected by any owner or ratepayer in any area affected by

the Order during a period of one month from the date of the first publication of such advertisement, and the Order shall be open for such inspection during such period.

Article IV.—A copy of any Order made as aforesaid by a County Council shall, at any time while copies of the Order are open to inspection as aforesaid, and, in the case of an Order which requires to be confirmed by the Local Government Board, at any time before the confirmation of the Order by the Local Government Board, be supplied by the Clerk to the Council to any owner or ratepayer in any area affected by the Order, upon payment by such owner or ratepayer of a sum not exceeding threepence for each hundred words of manuscript if the copy of the Order be in writing, or upon payment of a sum not exceeding threepence for a printed copy of the Order.

Article V.—On or before the date of the first publication of the advertisement in pursuance of Article III. hereof of the provisions of any Order made as aforesaid, and, in the case of any such Order which does not require to be confirmed by the Local Government Board, one month at least before the Order is finally approved by the County Council under the said sub-section (2) of section 57 of the said Act, three copies of the Order shall be forwarded to the Local Government Board and to each of the other Government Departments to whom a copy of the Notice of the Inquiry relative to the proposed Order was, by Article II. of this Order, required to be sent; a copy of the Order shall also be sent to each of the Local or other Authorities to whom a copy of such Notice was so required to be sent, and a copy shall also be posted in like manner as the Notice of the Inquiry was, in pursuance of the same Article, required to be posted.

Article VI.—The first advertisement in pursuance of Article III. hereof of the provisions of any Order made by a County Council under the said sub-section (1) of section 57 of the said Act shall be deemed to be the "first notice" for the purposes of sub-section (3) of that section

Article VII.—The expression "County Council" in this Order shall include a Joint Committee appointed under section 81 of the said Act by any County Councils of Administrative Counties for the purpose of dealing under section 57 of the said Act with a matter in which such Councils are jointly interested.

Given under the Seal of Office of the Local Government Board, this Fourteenth day of September, in the year One thousand eight hundred and eighty-nine.

(L.S.) Chas. T. Ritchie,
President.

Hugh Owen,
Secretary.

LOCOMOTIVES ON HIGHWAYS (*a*).

Regulations (*9th November*, 1896).

To the County Councils of the several Administrative Counties in England and Wales;—

To the Councils of the several County Boroughs in England and Wales;—

To the Sanitary Authorities of the several Sanitary Districts in the Administrative County of London;—

To the Urban District Councils of the several Urban Districts in England and Wales;—

To the Rural District Councils acting as the Highway Authorities in Rural Districts in England and Wales;—

And to all others whom it may concern.

Whereas by section 6 of the Locomotives on Highways Act, 1896 (*b*) (herein-after called "the Act"), it is enacted that—

> "(1.) The Local Government Board may make regulations with respect to the use of light locomotives on highways, and their construction, and the conditions under which they may be used.
>
> "(2.) . . . All regulations under this section shall have full effect notwithstanding anything in any other Act, whether general or local, or any bye-laws or regulations made thereunder."

And whereas by section 2 of the Act it is enacted that—

> "During the period between one hour after sunset and one hour before sunrise, the person in charge of a light locomotive shall carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations to be made by the Local Government Board."

And whereas by section 7 of the Act it is enacted that—

> "A breach of any . . . regulation made under this Act, . . . may, on summary conviction, be punished by a fine not exceeding ten pounds."

Now therefore, in pursuance of the powers given to Us by the Act, and by any other Statutes in that behalf, We, the Local Government Board, Do by this Our Order make the following Regulations with respect to the use of Light Locomotives on Highways, and their construction, and the conditions under which they may be used, and Direct that the same shall have effect on and after the Fourteenth day of November, One thousand eight hundred and ninety-six:—

Article I.—In this Order—

The expression "carriage" includes a waggon, cart, or other vehicle.

(*a*) See as to the construction of wheels of locomotives on highways the Order of November 26th, 1897, *post*, p. 856, which Order does not, like the Order here set out, apply to "Light Locomotives." See as to this the circular of the Local Government Board, *post*, pp. 855, 856.

(*b*) *Ante*, p. 717.

The expression "horse" includes a mule or other beast of draught or burden, and the expression "cattle" includes sheep.

The expression "Light Locomotive" means a vehicle propelled by mechanical power which is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not exceeding in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.

In calculating for the purposes of this Order the weight of a vehicle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion shall not be included.

ARTICLE II.—No person shall cause or permit a Light Locomotive to be used on any highway, or shall drive or have the charge of a Light Locomotive when so used, unless the conditions herein-after set forth shall be satisfied, namely,—

(1.) The Light Locomotive, if it exceeds in weight unladen five hundredweight, shall be capable of being so worked that it may travel either forwards or backwards.

(2.) The Light Locomotive shall not exceed six and a half feet in width, such width to be measured between its extreme projecting points.

(3.) The tyre of each wheel of the Light Locomotive shall be smooth and shall, where the same touches the ground, be flat and of the width following, namely,—

(a) if the weight of the Light Locomotive unladen exceeds fifteen hundredweight, but does not exceed one ton, not less than two and a half inches;

(b) if such weight exceeds one ton, but does not exceed two tons, not less than three inches;

(c) if such weight exceeds two tons, not less than four inches.

Provided that where a pneumatic tyre or other tyre of a soft and elastic material is used, the tyre may be round or curved, and there may be upon the same projections or bosses rising above the surface of the tyre if such projections or bosses are of the same material as that of the tyre itself, or of some other soft and elastic material. The width of the tyre shall, for the purpose of this proviso, mean the extreme width of the soft and elastic material on the rim of the wheel when not subject to pressure.

(4.) The Light Locomotive shall have two independent brakes in good working order, and of such efficiency that the application of either to such Locomotive shall cause two of its wheels on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the Light Locomotive as if such wheels were so held.

Provided that in the case of a bicycle this Regulation shall apply as if, instead of two wheels on the same axle, one wheel was therein referred to.

(5.) The Light Locomotive shall be so constructed as to admit of its being at all times under such control as not to cause undue interference with passenger or other traffic on any highway.

(6.) In the case of a Light Locomotive drawing or constructed to draw another vehicle or constructed or used for the carriage of goods, the name of the owner and the place of his abode or business, and in every such case and in the case of every Light Locomotive weighing unladen one ton and a half or upwards, the weight of the Light Locomotive unladen shall be painted in one or more straight lines upon some conspicuous part of the right or off side of the Light Locomotive in large legible letters in white upon black or black upon white, not less than one inch in height.

(7.) The Light Locomotive and all the fittings thereof shall be in such a condition as not to cause, or to be likely to cause, danger to any person on the Light Locomotive or on any highway.

(8.) There shall be in charge of the Light Locomotive when used on any highway a person competent to control and direct its use and movement.

(9.) The lamp to be carried attached to the Light Locomotive in pursuance of section 2 of the Act shall be so constructed and placed as to exhibit, during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the Light Locomotive is proceeding or is intended to proceed, and to exhibit a red light so visible in the reverse direction. The lamp shall be placed on the extreme right or off side of the Light Locomotive in such a position as to be free from all obstruction to the light.

Provided that this Regulation shall not extend to any bicycle, tricycle, or other machine to which section 85 of the Local Government Act, 1888, applies.

Article III.—No person shall cause or permit a Light Locomotive to be used on any highway for the purpose of drawing any vehicle, or shall drive or have charge of a Light Locomotive when used for such purpose unless the conditions herein-after set forth shall be satisfied, namely,—

(1.) Regulations (2), (3), (5), and (7) of Article II. of this Order shall apply as if the vehicle drawn by the Light Locomotive was therein referred to instead of the Light Locomotive itself, and Regulation (6) of the Article shall apply as if such vehicle was a Light Locomotive constructed for the carriage of goods.

(2.) The vehicle drawn by the Light Locomotive, except where the Light Locomotive travels at a rate not exceeding four miles

an hour, shall have a brake in good working order of such efficiency that its application to the vehicle shall cause two of the wheels of the vehicle on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the vehicle as if such wheels were so held.

(3.) The vehicle drawn by the Light Locomotive shall, when under the last preceding Regulation a brake is required to be attached thereto, carry upon the vehicle a person competent to apply efficiently the brake: Provided that it shall not be necessary to comply with this Regulation if the brakes upon the Light Locomotive by which the vehicle is drawn are so constructed and arranged that neither of such brakes can be used without bringing into action simultaneously the brake attached to the vehicle drawn, or if the brake of the vehicle drawn can be applied from the Light Locomotive independently of the brakes of the latter.

Article IV.—Every person driving or in charge of a Light Locomotive when used on any highway shall comply with the Regulations herein-after set forth; namely,—

(1.) He shall not drive the Light Locomotive at any speed greater than is reasonable and proper having regard to the traffic on the highway, or so as to endanger the life or limb of any person, or to the common danger of passengers.

(2.) He shall not under any circumstances drive the Light Locomotive at a greater speed than twelve miles an hour. If the weight unladen of the Light Locomotive is one ton and a half and does not exceed two tons, he shall not drive the same at a greater speed than eight miles an hour, or if such weight exceeds two tons at a greater speed than five miles an hour.

Provided that whatever may be the weight of the Light Locomotive, if it is used on any highway to draw any vehicle, he shall not under any circumstances drive it at a greater speed than six miles an hour.

Provided also that this Regulation shall only have effect during six months from the date of this Order, and thereafter until We otherwise direct.

(3.) He shall not cause the Light Locomotive to travel backwards for a greater distance or time than may be requisite for purposes of safety.

(4.) He shall not negligently or wilfully cause any hurt or damage to any person, carriage, horse, or cattle, or to any goods conveyed in any carriage on any highway, or, when on the Light Locomotive, be in such a position that he cannot have control over the same, or quit the Light Locomotive without having taken due precautions against its being started in his absence, or allow the Light Locomotive or a vehicle drawn thereby to

stand on such highway so as to cause any unnecessary obstruction thereof.

(5.) He shall when meeting any carriage, horse, or cattle keep the Light Locomotive on the left or near side of the road, and when passing any carriage, horse, or cattle proceeding in the same direction keep the Light Locomotive on the right or off side of the same.

(6.) He shall not negligently or wilfully prevent, hinder, or interrupt the free passage of any person, carriage horse, or cattle on any highway, and shall keep the Light Locomotive and any vehicle drawn thereby on the left or near side of the road for the purpose of allowing such passage.

(7.) He shall, whenever necessary, by sounding the bell or other instrument required by section 3 of the Act, give audible and sufficient warning of the approach or position of the Light Locomotive.

(8.) He shall on the request of any police constable, or of any person having charge of a restive horse, or on any such constable or person putting up his hand as a signal for that purpose, cause the Light Locomotive to stop and to remain stationary so long as may be reasonably necessary.

Article V.—If the Light Locomotive is one to which Regulation (6) of Article II. applies, and the particulars required by that Regulation are not duly painted thereon, or if the Light Locomotive is one to which that Regulation does not apply, the person driving or in charge thereof shall, on the request of any constable, or on the reasonable request of any other person, truly state his name and place of abode, and the name of the owner, and the place of his abode or business.

This Order may be cited as "The Light Locomotives on Highways Order, 1896."

Given under the Seal of Office of the Local Government Board, this ninth day of November, in the year One thousand eight hundred and ninety-six.

(L.S.)
Hugh Owen,
Secretary.

Henry Chaplin,
President.

The following circular was issued with the foregoing order:

LOCOMOTIVES ON HIGHWAYS ACT, 1896.

Local Government Board,
Whitehall, S. W.,
10th November, 1896.

Sir,

Order No. 35,520.

I am directed by the Local Government Board to draw attention to the provisions of the Locomotives on Highways Act, 1896 (59 & 60

Vict. c. 36), the object of which is to amend the law with respect to the use of locomotives on highways. The Act will come into operation on the 14th instant. (Section 12.)

Light Locomotives.

Exception from certain Enactments.

Regulations of Secretary of State.

Sub-section (1) of section 1 of the Act provides that the enactments mentioned in the Schedule, and any other enactment restricting the use of locomotives on highways, and contained in any public, general, or local and personal Act in force at the passing of the new Act, shall not apply to any vehicle propelled by mechanical power if it is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not to exceed in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause. Vehicles so exempted, whether locomotives or drawn by locomotives, are in the Act referred to as Light Locomotives.

In calculating for the purposes of the Act the weight of a vehicle unladen, the weight of any water, fuel, or accumulators, used for the purpose of propulsion, is not to be included. (Section 1 (2).)

The enactments which are mentioned in the Schedule to the Act, and which are not to apply to light locomotives, are the Locomotives Act, 1861 (24 & 25 Vict. c. 70), section 41 of the Thames Embankment Act, 1862 (25 & 26 Vict. c. 93), the Locomotives Act, 1865 (28 & 29 Vict. c. 83), and Part II. of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77). An exception is, however, made as regards so much of section 1 of the Locomotives Act, 1861, as relates to tolls on locomotives, as regards section 7 of that Act, which requires damage caused by locomotives to bridges to be made good, and as regards section 13, which provides that nothing in the Act shall authorise any person to use upon a highway a locomotive engine which shall be so constructed or used as to cause a public or private nuisance, and directs that every person using a locomotive engine on a highway shall, notwithstanding the Act, be liable to an indictment or action for such use, where, but for the passing of the Act, such indictment or action could be maintained. Light Locomotives will not be exempted from these enactments.

Among the enactments from which Light Locomotives will be exempted, and which are included in the Schedule to the new Act, special attention may be directed to the provisions of section 28 of the Highways and Locomotives (Amendment) Act, 1878, regulating the weight of locomotives and the construction of wheels, and to sections 31 and 32 of the same Act, under which various bodies may make bye-laws as to certain matters relating to the use of locomotives. These provisions will not apply to Light Locomotives, and no licence from the council of any county or county borough will be required for the use of these locomotives.

Light Locomotive to be deemed a Carriage.

A Light Locomotive is to be deemed to be a carriage within the meaning of any Act of Parliament, whether public, general or local and of any rule, regulation, or bye-law made under any Act of Parliament, and if used as a carriage of any particular class, is to be deemed to be a carriage of that class and the law relating to carriages of that class is to apply accordingly. (Section 1 (1) (b).) Consequently if, *e.g.*, a Light Locomotive is used as a hackney carriage, all statutory provisions and bye-laws with regard to hackney carriages in force in the place in which the Light Locomotive is used will apply to it.

Excise Duty on Light Locomotives.

Under section 4 of the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), certain excise duties are payable for every carriage and every hackney carriage as thereby defined. The definition of carriage includes any carriage, except a hackney carriage, drawn or propelled upon a road or tramway by steam or electricity or any other mechanical power, but does not include a waggon, cart, or other such vehicle which is constructed or adapted for use, and is used, solely for the conveyance of any goods or burden in the course of trade or husbandry, and whereon the christian name and surname and place of abode or place of business of the person, or the name or style and principal or only place of business of the company or firm keeping the same are visibly and legibly painted in letters of not less than one inch in length. Hackney carriage is defined by the section as meaning any carriage standing or plying for hire, and including any carriage let for hire by a coachmaker or other person whose trade or business it is to sell carriages, or to let carriages for hire, provided that such carriage is not let for a period amounting to three months or more.

The duties imposed by the section will be payable for Light Locomotives which are carriages or hackney carriages as above defined, but besides these, where a Light Locomotive is liable to duty, either as a carriage or as a hackney carriage, under section 4 of the Customs and Inland Revenue Act, 1888, an additional excise duty will, on and after the 1st of January next, be payable for it under section 8 of the new Act, at the following rate, namely:—

	£	*s.*	*d.*
If the weight of the Locomotive exceeds one ton unladen, but does not exceed 2 tons unladen - - - -	2	2	0
If the weight of the Locomotive exceeds 2 tons unladen	3	3	0

Every such duty must be paid together with the duty on the licence for the Locomotive as a carriage or a hackney carriage, and it will be dealt with in manner directed with respect to duties on local taxation licences within the meaning of the Local Government Act, 1888. The duty will accordingly be collected by the Inland Revenue Commissioners, and be paid with the proceeds of the duties on local taxation licences into the Local Taxation Account.

Regulations of Board as to Light Locomotives.

Section 6 of the Act empowers the Board to make regulations with respect to the use of Light Locomotives on highways and their construction, and the conditions under which they may be used. The Board, after communicating with other Government Departments interested, and with a large number of Local Authorities, manufacturers of Locomotives, and other persons and bodies concerned, and considering the suggestions thus obtained, have issued an Order making Regulations in pursuance of the power conferred upon them by the section, and copies of the Order are enclosed.

The Order has been placed on sale and will shortly be obtainable from Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, London, E.C., either directly or through any bookseller.

In the Act, as already explained, the term "Light Locomotive" includes vehicles which are exempted from the enactments in the Schedule, whether they are locomotives or are drawn by locomotives. For the purposes of the Order, however, it has been found convenient not to include in the term any vehicle drawn by a Locomotive. Article I. accordingly provides that in the Order the expression "Light Locomotive" shall mean a vehicle propelled by mechanical power which is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not exceeding in weight unladen four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.

In the part of this circular dealing with Regulations made by the Board under the Act, the term "Light Locomotive" is used in this sense.

In calculating for the purposes of the Order, the weight of a vehicle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion is not to be included.

Article II. prohibits any person from causing or permitting a Light Locomotive to be used on any highway, or from driving or having charge of a Light Locomotive when so used, unless certain conditions are satisfied. These conditions require that the Light Locomotive, if it exceeds in weight unladen 5 cwt., shall be capable of being so worked that it may travel either forwards or backwards, and relate to the width of the Light Locomotive, the smoothness and width of the tyres of the wheels and to the brakes. They also require that the Light Locomotive shall be so constructed as to admit of its being at all times under such control as not to cause undue interference with passenger or other traffic on any highway, that the Light Locomotive and all its fittings shall be in such a condition as not to cause, or to be likely to cause, danger to any person on the Light Locomotive or on any highway, and that there shall be in charge of the Light Locomotive, when used on any highway, a person competent to control and direct its use and movement.

Regulation (6) of Article I. requires that the name of the owner, and the place of his abode or business, and the weight of the Light Locomotive unladen, shall, in the case of a Light Locomotive drawing or constructed to draw another vehicle, or constructed or used for the carriage of goods, be painted in one or more straight lines upon some conspicuous part of the right or off side of the Light Locomotive in large legible letters, in white upon black or black upon white, not less than one inch in height. Moreover, the weight of the Light Locomotive must in every case, where unladen it amounts to a ton and a half or upwards, be painted on it in a similar manner.

It will be observed that this Regulation will not extend to all Light Locomotives. So far as it relates to the name of the owner and the place of his abode or business, it will only apply to the case of any Light Locomotive drawing or constructed to draw another vehicle, or constructed or used for the carriage of goods, whilst as regards the weight of the Light Locomotive, it will apply to these cases, and also to the case of any Light Locomotive weighing a ton and a half or upwards.

If the Light Locomotive is one to which the Regulation applies and the particulars required are not duly painted on it, or if the Light Locomotive is not one to which the Regulation applies, the person driving or in charge of it is required by Article V. of the Order, on the request of any constable, or on the reasonable request of any other person, to truly state his name and place of abode, and the name of the owner, and the place of his abode or business.

Section 2 of the Act directs that during the period between one hour after sunset and one hour before sunrise the person in charge of a Light Locomotive shall carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations to be made by the Board. Regulation (9) of Article I. of the Order accordingly makes it one of the conditions upon which a Light Locomotive can be used on a highway that the lamp to be carried attached to it in pursuance of section 2 of the Act shall be so constructed and placed as to exhibit, during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the Light Locomotive is proceeding or is intended to proceed, and to exhibit a red light, so visible, in the reverse direction. The lamp must be placed on the extreme right or off side of the Light Locomotive in such position as to be free from all obstruction to the light. The Regulation will not extend to bicycles, tricycles, velocipedes, or other similar machines. Section 85 of the Local Government Act, 1888, contains provisions as to the lamp to be carried by these machines.

Article III. of the Order deals with any vehicle drawn by a Light Locomotive, and prohibits any person from causing or permitting a Light Locomotive to be used on a highway for the purpose of drawing any vehicle, or from driving or having charge of a Light Locomotive when used for this purpose, unless certain conditions are satisfied.

The effect of the Article is to make applicable to a vehicle drawn by a Light Locomotive the conditions in Article II. with respect to the width of the Light Locomotive, and to the tyres of the wheels, with respect to the construction of the Light Locomotive so as to secure its being under such control as not to cause undue interference with passenger or other traffic on any highway, and with respect to the Light Locomotive and its fittings being in such a condition as not to cause, or to be likely to cause danger to any person on the Light Locomotive or on any highway. The Regulations in Article II. on these subjects will apply as if the vehicle drawn by a Light Locomotive was therein referred to instead of the Light Locomotive itself. Moreover the name of the owner, and the place of his abode or business, and the weight of the vehicle must be painted on it in the manner directed by Regulation (6) of Article II. in the case of a Light Locomotive constructed for the carriage of goods.

Article III. also directs that any vehicle drawn by a Light Locomotive, except where the Light Locomotive travels at a rate not exceeding four miles an hour, must have a brake of a prescribed efficiency, and requires that the vehicle shall carry upon it a person competent to apply the brake efficiently. It will not, however, be necessary to comply with this last condition, if the brakes upon the Light Locomotive by which the vehicle is drawn are so constructed and arranged that neither of them can be used without bringing into action simultaneously the brake attached to the vehicle drawn, or if the brake of the vehicle drawn can be applied from the Light Locomotive independently of the brakes of the latter.

By Article IV. Regulations are made with which every person driving or in charge of a Light Locomotive when used on any highway is required to comply. These Regulations are intended to prevent injury being caused by any Light Locomotive to any person, carriage, horse, or cattle, or to any goods conveyed in any carriage on a highway, and also to prevent obstruction of the highway by Light Locomotives or vehicles drawn by them, or undue interference with the ordinary traffic. The usual rules applicable where carriages meet or pass each other are required to be observed in the case of Light Locomotives, and any person driving or in charge of a Light Locomotive must, on the request of any police constable or of any person having charge of a restive horse, or on the constable or person putting up his hand as a signal for that purpose, cause the Light Locomotive to stop, and to remain stationary so long as may be reasonably necessary.

The provision in Section 3 of the Act that every Light Locomotive shall carry a bell or other instrument capable of giving audible and sufficient warning of the approach or position of the carriage is supplemented by Regulation (7) of Article IV., which directs that the person driving or in charge of the Light Locomotive shall, whenever necessary, by sounding such bell or other instrument, give audible and sufficient warning of the approach or position of the Light Locomotive.

Speed of Light Locomotives.

Section 4 of the Act directs that no Light Locomotive shall travel along a public highway at a greater speed than 14 miles an hour, or than any less speed that may be prescribed by Regulations of the Board. There is considerable difficulty in laying down definite rules as to the speed of Light Locomotives at the present time, as no experience has been obtained of their use in this country; but the Board have been strongly urged to make some general Regulations on the subject, and they have dealt with it by Article IV. of the Order. That Article directs that a person driving or in charge of a Light Locomotive when used on any highway shall not drive it at any speed greater than is reasonable and proper, regard being had to the traffic on the highway, or so as to endanger the life or limb of any person, or to the common danger of passengers. Regulation (2) of the article further provides that he shall not under any circumstances drive the Light Locomotive at a greater speed than 12 miles an hour. The Board have considered that some further restrictions should be placed on the speed of Light Locomotives of considerable weight. The Article accordingly provides that if the weight of the Light Locomotive unladen is one ton and a half, and does not exceed two tons, it shall not be driven at a greater speed than eight miles an hour, or if such weight exceeds two tons, at a greater speed than five miles an hour.

A low rate of speed is specially necessary where a Light Locomotive is used on any highway to draw another vehicle, and the Article directs that in this case the Light Locomotive shall not under any circumstances be driven at a greater speed than six miles an hour.

The Board are aware that experience may render it desirable that modifications should be made in the rules on this subject, and they have accordingly provided that Regulation (2) of Article IV. shall only have effect for six months from the date of the Order, and thereafter until they otherwise direct.

It will be understood that a person driving a Light Locomotive will not necessarily be entitled to drive it at the rates of speed mentioned in this Regulation (2). He cannot drive at a greater speed than is prescribed by the Regulation, but he must drive at such less speed as is required to enable him not to contravene Regulation (1) of Article IV., which prohibits him from driving at any greater speed than is reasonable and proper, regard being had to the traffic on the highway, or so as to endanger the life or limb of any person, or to the common danger of passengers.

The Regulations which the Board have made are of general application, but sub-section (2) of section 6 of the Act provides that Regulations under the section may, if the Board deem it necessary, be of a local nature and limited in their application to a particular area, and may, on the application of any local authority, prohibit or restrict the use of locomotives for purposes of traction in crowded streets, or in other places where such use may be attended with danger to the public.

It will, of course, be competent to any Local Authority to apply to the Board under this enactment to make Regulations of a local nature as to the speed of Light Locomotives if they consider that the circumstances of their district render further Regulations necessary, but the Board would suggest that any such application should be deferred until some experience has been obtained of the working of the general Regulations on the subject.

Effect of Regulations.

All Regulations made by the Board under the Act will, under section 6 (2) have full effect, notwithstanding anything in any other Act, whether general or local, or any bye-law or regulations made thereunder; but they will not exempt a Light Locomotive, or the owner or person in charge of it, from the operation of any statutory provision or bye-law applicable thereto, and such provision will apply as if the Regulations had not been made.

Regulations of Secretary of State.

Section 5 of the Act provides that the keeping and use of petroleum or of any other inflammable liquid or fuel for the purpose of Light Locomotives shall be subject to Regulations made by a Secretary of State, and that Regulations so made shall have effect notwithstanding anything in the Petroleum Acts, 1871 to 1881. The Secretary of State has made Regulations under this provision and copies of them are enclosed at his request. They have been placed on sale, so that they will shortly be obtainable in the same way as the Regulations made by the Board.

Byelaws by Council of County or County Borough.

Under proviso (*a*) to section 1 (1) of the Act the council of any county or county borough are empowered to make byelaws preventing or restricting the use of Light Locomotives upon any bridge within their area, where the council are satisfied that such use would be attended with damage to the bridge or danger to the public.

Byelaws made under this provision will not require sanction or confirmation by the Board or by any other authority.

Fines.

A breach of any byelaw or Regulation made under the Act, or of any provision of the Act, may, on summary conviction, be punished by a fine not exceeding £10. (Section 7.)

DRIVING WHEELS OF LOCOMOTIVES OTHER THAN LIGHT LOCOMOTIVES.

The provisions of the Act for the most part relate to Light Locomotives as thereby defined, but it contains one section which applies to other locomotives on roads. Sub-section (4) of section 28 of the Highways and Locomotives (Amendment) Act, 1878, provides that the driving wheel of a Locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor

more than three-quarters of an inch in thickness, extending the full breadth of the tyre, and that the space intervening between each such cross-bar shall not exceed three inches. Section 9 of the new Act provides that these requirements may be from time to time varied by Order of the Board. As section 28 of the Act of 1878 is included in Part II. of that Act, and Light Locomotives are exempted from this Part, neither sub-section (4) of section 28 of the Act of 1878 nor section 9 of the Act of 1896 will apply to these Locomotives.

I am, Sir,
Your obedient Servant,
HUGH OWEN,
Secretary.

The Clerk to the County Council,
or other Local Authority.

General Order, 26th November, 1897, varying Provisions as to Construction of Wheels of Locomotives on Highways (*a*).

To the County Councils of the several Administrative Counties in England and Wales;—

To the Councils of the several County Boroughs in England and Wales;—

To the Sanitary Authorities of the several Sanitary Districts in the Administrative County of London;—

To the Urban District Councils of the several Urban Districts in England and Wales;—

To the Rural District Councils acting as the Highway Authorities in Rural Districts in England and Wales;—

And to all others whom it may concern.

Whereas by section 28 of the Highways and Locomotives (Amendment) Act, 1878, it is enacted that it shall not be lawful to use on any turnpike road or highway a Locomotive constructed otherwise than in accordance with the provisions therein set forth, and by sub-section (4) of that section it is provided as follows; that is to say,—

> "The driving wheels of a locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tyre, and the space intervening between each such cross-bar shall not exceed three inches."

And whereas by section 9 of the Locomotives on Highways Act, 1896, it is enacted that the requirements of the above-cited sub-section (4) of section 28 of the Highways and Locomotives (Amendment) Act, 1878, may be from time to time varied by Order of the Local Government Board:

(*a*) This Order does not apply to "Light Locomotives." See note, *ante*, p. 844, and the last paragraph of the above circular.

Now therefore, in pursuance of the powers given to Us in that behalf, We, the Local Government Board, hereby vary the provisions of sub-section (4) of section 28 of the Highways and Locomotives (Amendment) Act, 1878, as follows :—

A locomotive may be used the driving wheels of which instead of being smooth-soled or shod with cross-bars are shod with wooden blocks, subject to the following conditions :—

1. No block shall be less than five inches in width measured along the circumference of the wheel.
2. The blocks shall not be more than two inches apart similarly measured.
3. The blocks shall be arranged in two or more rows, and so that a straight line drawn through the middle of each block shall pass through the middle of the interval between the blocks of the next row.
4. The width of each block measured across the circumference of the wheel shall be such that the sum of the widths of the blocks shall not be less than the width prescribed by the Act for the tire; provided that no block shall be less than five inches in width measured as last-mentioned.
5. The blocks shall work on efficient springs or other elastic material so as to yield with the pressure of the weight of the Locomotive ; but not so that the surface of the wood block shall be at any time level with or depressed below the tire of the wheel.
6. No such wheel shall be used any block of which is so worn that any metal rim surrounding the block can come in contact with the road.

Given under the Seal of Office of the Local Government Board, this Twenty-sixth day of November, in the year One thousand eight hundred and ninety-seven.

HENRY CHAPLIN,
President.

(L.S.)

HUGH OWEN,
Secretary.

The following circular was issued with the foregoing Order.

Local Government Board,
Whitehall, S.W.,
27th November 1897.

SIR,

I AM directed by the Local Government Board to advert to section 28 of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77) which makes it unlawful to use on any highway a locomotive constructed otherwise than in accordance with the provisions of the section. One of these provisions is contained in sub-section (4), Order, No. 37,05

which directs that the driving wheels of the locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tire, and that the space intervening between each such cross-bar shall not exceed three inches.

Section 9 of the Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), however, enacts that the requirements of sub-section (4) of section 28 of the Act of 1878 may be from time to time varied by Order of the Board, and representations have been made to the Board as to the expediency of their exercising the power thus conferred upon them.

The Board, after communicating with a number of local authorities and other bodies and persons concerned, and considering the suggestions thus obtained, have issued an Order varying the provisions of sub-section (4) of section 28 of the Act of 1878, so that, subject to the conditions specified in the Order, a locomotive may be used on a highway if the driving wheels, instead of being smooth-soled or shod with cross-bars, are shod with wooden blocks. It will be understood that the Order does not affect the requirements of section 28, except those contained in sub-section (4), and that the other requirements must still be complied with.

Copies of the Order are enclosed. It has been placed on sale and will shortly be obtainable from Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, London, E.C., either directly or through any bookseller.

I am, Sir,
Your obedient Servant,
HUGH OWEN,
Secretary.

The Clerk to the County Council,
or other Local Authority.

PARISH COUNCILS.

See "BORROWING," *ante*, p. 761; "LAND: COMPULSORY HIRING AND PURCHASE OF," *ante*, pp. 798—831.

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